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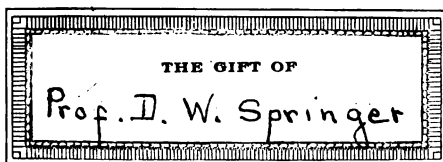
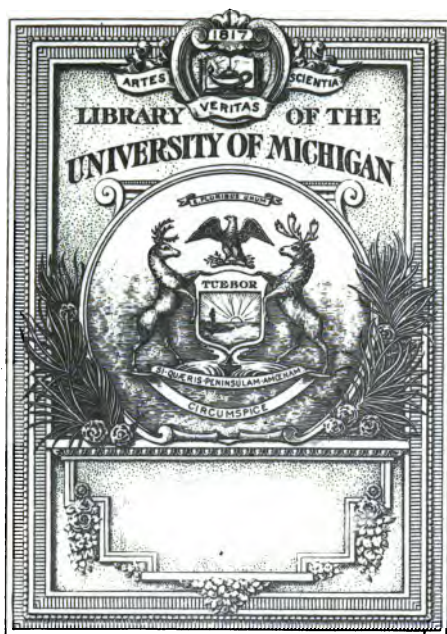
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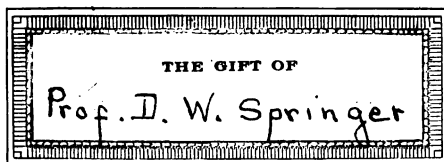
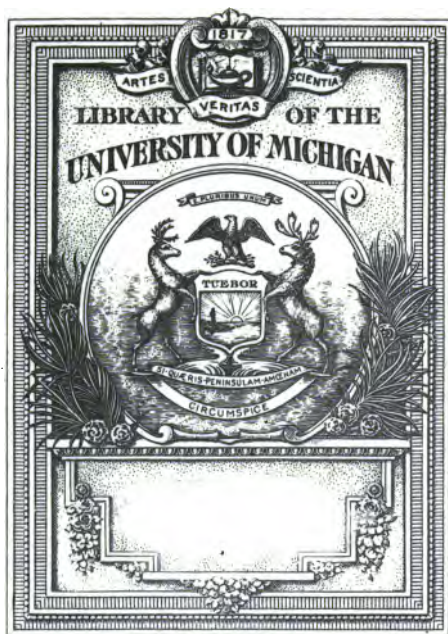
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THE
BUSINESS MAN'S
COMMERCIAL LAW
& BUSINESS FORMS



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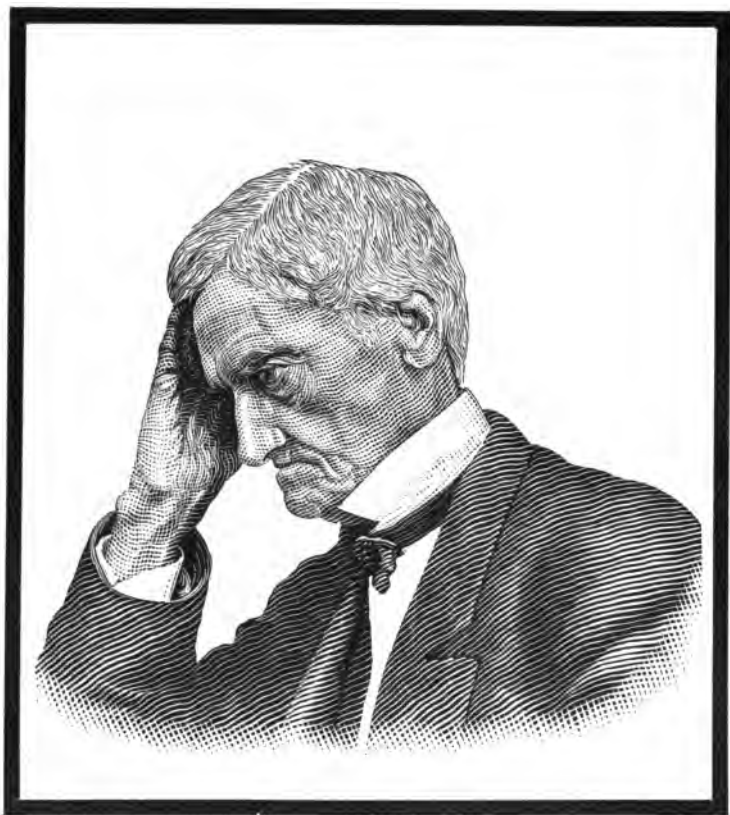
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THE LATE HON. GEORGE W. CLINTON.

G. W. Clinton



THE BUSINESS MAN'S
COMMERCIAL LAW
AND
BUSINESS FORMS
COMBINED.

A VADE-MECUM FOR THE COUNTING-HOUSE.

BY

J^h C. BRYANT, M. D.

PRESIDENT OF THE BRYANT & STRATTON BUFFALO BUSINESS COLLEGE, AUTHOR OF
BRYANT'S NEW SERIES OF BOOK-KEEPING.

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FOURTH EDITION.

BUFFALO, N. Y.
PUBLISHED BY J. C. BRYANT.
1886.

Entered according to Act of Congress, in the year 1882, by

J. C. BRYANT, M. D.,

In the Office of the Librarian of Congress, at Washington.



Gift
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8-26-1929

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THE BOOK.—It is largely the work of a gentleman the greater portion of whose life has been devoted to educating young men for active business, and in aiding commerce, and whose success in these regards has been of great service to our country. To coöperate with him is a pleasure; and this introductory matter is prepared in accordance with his suggestions and at his request. The book embraces, succinctly, the great body of the laws, a knowledge of which is essential to the proper conduct not only of commerce, but of extended business of any and every kind, and embodies the usual and approved forms of the instruments in use for their transaction. A knowledge of the law which it embodies will not, of itself, always insure success or prevent disaster; but ignorance of it brings danger, and a departure from or violation of it, whether ignorant or willful, must certainly result in loss, if not in utter failure and disgrace. To the aspirant for honorable place in the business world it will, I am confident, prove a strong helper: to the merchant, the manufacturer, the large producer, to every one who has the conduct of a large business, it will prove a safe guide and an efficient guard.

PRODUCTION AND COMMERCE.—The results of labor, whether intellectual or material, are productions. The clergyman, the editor, the author, equally with the artist, the artizan, the miner, the manufacturer and the farmer, are producers. The products of their industry, with the spoils wrested from the ocean and great waters of the earth, like the mummies of the Pharaohs, are subjects of sale; and Commerce transports and interchanges them the wide world over.

MONEY AND WEALTH.—Money is a medium of exchange—a representative of value. Its value or purchasing power fluctuates, and seems diminishing. A dollar in pre-revolutionary times would buy more of the real wealth of the world than it would now. Those products of physical, intellectual and spiritual labor which comfort, strengthen and maintain the

vigor of the body, inform the mind, and elevate the soul are wealth. Were our soil to become infertile and our waters barren, our country would be poor indeed; were Homer and the old Classics and Shakespeare to be destroyed, what wealth would perish; were the Bible withdrawn from this glorious world, the thick and hopeless darkness which enshrouded it before the coming of the Saviour would return, and deepen and blot out hope and joy forever.

LABOR.—All honor to the toilers, whether on land or water, whether pallid with study or begrimed with sweat. They are the parents and possessors of all true enjoyment, and Commerce is their servant and their friend. All men are, by nature, born free and equal. They are equal in the sight of our law and in the Creator's love; and the man of business, or any man, who forgets this great truth, is false to our Institutions and mindless of Religion. The laborer, equally with the millionaire, should enjoy "ease and alternate labor." The drones, if there be any in our busy country, are few. There can be no high and pure enjoyment in their lives. Wealth is power. It is, as Bacon said, "Like manure, and must be scattered" to be useful. If applied to great, good ends, it brings heavenly satisfaction, and, with God's blessing, promotes happiness. If hoarded, or put to the possessor's personal uses only, it cankers the soul; and Scott's lines apply forcibly to him who so basely neglects duty:

"Despite his titles, power and pelf,
The wretch concentr'd all in self
Living, shall forfeit all renown,
And doubly dying, shall go down
To the vile dust from which he sprung,
Unwept, unhonored and unsung."

LUXURY.—If this be voluptuousness, or a free, extravagant indulgence in the pleasures of the table, in equipage, and furniture, and dress, the higher the tribute it pays to Commerce and the Common Treasury the better. But, if dainties and anything delightful to the senses be luxuries, the more widely they are dispersed, and the cheaper they are made, the better. They ought to be made free as possible to the poor as well as to the rich. It is pleasant to recall the fact that tea, and sugar, and coffee, and numberless other good things, which are now the comforts of all classes, were once expensive luxuries. So was education. We may thank Commerce for cheapening and making them attainable by the poorest in our land. Then again, it must

be remembered that the extravagance of the rich, which we deplore and inveigh against as opposed to Spartan simplicity and the grim frugality of Cato, while it neither exalts the rich, nor gives them happiness or political power, is, in truth, a patron of the fine arts, an incentive to invention and industry, and the main support of myriads of hard working people.

COMMERCE, TRADE.--In its widest meaning, Commerce includes the dealings of one class of a community with another, friendly and familiar interchange of thoughts, and even the inspirations of heavenly meditation.

Thus Milton :

"Hail divinest Melancholy !
 * * * * *
 Come pensive Nun, devout and pure,
 Sober, steadfast and demure,
 Come, but keep thy wonted state,
 With even step and musing gait,
 And looks *commencing* with the skies,
 Thy rapt soul sitting in thine eyes."

But Commerce, and Trade, are in ordinary use confined to the exchange of merchandise. They differ, apparently, in this, that while Trade may always be used as a substitute for Commerce, Commerce cannot be, in all cases, substituted for Trade. Commerce is always grand ; Trade is often petty. Commerce, it has been said, refers more appropriately to trade carried on by ships. Traffic within States is Trade. Individuals trade with each other. Trade is a single transaction or a series of petty ones. Trade brings wheat and corn to Chicago and Buffalo and gives them the dignity of markets : the sending of their stores to New-York may be termed Trade, or Commerce, indifferently : New-York ships them to the markets of the old world, and that is Commerce.

THE ORIGIN OF COMMERCE.—Of this we know nothing surely. It has been said that before the rise of Commerce, the only intercourse that nations held with each other was aggressive. Petty traffic must have existed in families and tribes in the very earliest times, and no nation can ever have subsisted without internal trade. The lust of glory and the thirst for gold have made nations brutal and piracy an honorable occupation ; but, from very early times, before and long prior to the time of Solomon, Commerce was busy in peaceful intercourse with the most distant nations.

THE REGULATION OF COMMERCE GENERALLY.—The Supreme power of a State regulates and controls its Commerce. Commerce is mutual, and

the Commerce of one Country with another includes the interchange — the importation as well as the exportation to and fro. Commerce includes intercourse, and the power of a State to regulate Commerce consequently extends to the regulation of its own vessels, to enactments for the comfort, safety and health of its sailors, for the safety of passengers, and the punishment of crimes on the high seas and its own waters. Every country regulates Commerce by imposing duties on imports; and, while it permits importation in the ships of all friendly nations, jealously confines its own coasting and internal trade to its own ships and vessels.

THE REGULATION OF OUR COMMERCE.—The Constitution of the United States [Art. 1, § 8] provides that the Congress shall have power “To regulate Commerce with foreign nations, and among the several States, and with the Indian tribes,” and that “The judicial power of the United States shall extend” [among other things] “to all cases of admiralty and maritime jurisdiction.” [Const., Art. 3, § 1, 2]. There can be no doubt as to the construction or meaning of the power to regulate Commerce with foreign nations, and the Indian tribes: but the nature and limits of the power to regulate Commerce between the several States are claimed to be matters of question. In Great Britain, the admiralty jurisdiction is confined to waters navigable from the sea and within the ebb and flow of its tides. The Supreme Court of the United States has decided, and it is now admitted law, that the admiralty jurisdiction in our country extends to our great rivers so far as actually navigable from the sea and to our great chain of lakes and their connecting straits or rivers.

LAW.—The books vary in their definitions of law. Law, in its most general sense, is a rule of action, and every law, when capable of being violated, has its sanction; that is to say, its violation brings a prescribed penalty or painful consequence.

DIVINE LAWS.—Divine Laws are impressed by God upon matter or prescribed for man's affection and conduct. The former were called the laws of Nature: We infer or deduce them from observation and call them science. To deny that the Being who imposed can modify, change and abrogate them is a denial of His existence. We believe that they exist only at His pleasure and through His power. The laws prescribed for human action, are indicated by the consequences of their violation, and give rise to caution, to prudence, to temperance in all things and the avoidance of excess.

The prescriptions of Religion embrace all pure morality, incite to the practice of every virtue, and, under all circumstances, insure tranquillity of soul. Were its reign effectual everywhere, human law would be superfluous and earth an Eden.

MUNICIPAL LAW.—Municipal Law is a rule of action prescribed by a State. Collectively, it is the entire body of laws of the State, defining its own powers, providing for their execution and its own continuance, defining the rights and duties of the people within its territory, and denouncing punishments for their neglect or violation. It attempts to guard life, liberty and property, but never with full, unvarying success. It recognizes "duties of imperfect obligation" which it cannot and does not attempt to enforce. It punishes open crimes, but cannot reach the bitter fountains, nor cure the distempered lusts from which they flow. It fines, imprisons, disfranchises, hangs, but murder, and arson, and crimes of every hue, still threaten our liberties and deform the land. Municipal law differs, in various countries, in its origin and in its name. It differs, too, vastly, in substance, in autocratic, kingly and free governments. In the United States, every State government and its law, as well as that of the United States and its law, is but "the People's collected will."

OUR MUNICIPAL LAW.—The laws of the several States, differ as they may in immaterial instances and particulars, are not substantially variant. With the exception of Louisiana, which has a Code founded on the Civil or Roman Law, the broad foundation of the law of all the States is the common law of England.

THE COMMON LAW.—This term is sometimes used to distinguish that part of the law of England which has grown up from usage from Acts of Parliament. It is sometimes called the unwritten law, while the Statutes are called the written law; but, in truth, both are written, and the ancient customs comprised in the common law are supposed to be, in large part, old enactments, the records of which have perished. It is said to rest in maxims; but these maxims are simply moral, have not the force of law, and are, in practice, often widely departed from. Its great boast was that it was flexible and could be modified and varied and made applicable to the new changes of business and the progress of the race, and so the law, it was said, rests in the bosom of the judge. Much better is it that it should rest in the sense and judgment of the Legislature. Statute law is

more flexible than the common law, and can better provide that certainty of right, of duty, and of decision which is the chiefest security of our rights and liberties.

This term is sometimes used to express the whole law, statutory and customary, as administered in the most ancient law Courts of England, in distinction from that administered in the more recent Court of Chancery. In the United States it is used as signifying the whole body of the English law, at least down to the time of our Revolution, in distinction from the civil law, and the canon law so far as adopted in England.

EQUITY.—This is natural justice as between man and man. It is declared and defined by every system of law, but no human power has ever enacted, and no human power can enforce, it. The Institutes of Justinian declare: "The precepts of the Law are to live honestly, to hurt no one, to give to every one his due." This last is a maxim of the common law. No law except the Divine one commands it. Equity is also used as meaning the body of the English Law as administered by its Court of Chancery. That court sprang from the necessity of affording relief which was not attainable in the Law Courts, and attaining justice where the Law Courts were powerless. It recognized the equity of redemption in mortgages, relieved against fraud, mistake and accident, decreed the cancellation and amendment of instruments, rescinded or decreed the specific performance of contracts, took exclusive jurisdiction of trusts and charities. Its jurisdiction was very wide. One of its most fruitful maxims was that he who came into equity for relief, must do equity as a condition of obtaining it. Its procedure and process were different from those of the Law Courts, and its remedies were peculiar. In the State of New-York, and nearly every State in the Union, and in the United States, Law and Equity jurisdictions are happily blended, and the same Courts administer both law and equity.

THE CIVIL LAW.—This is the positive municipal Law of the Roman Empire as collected by the Emperor Justinian, and published by his authority. The Codes of France, of Louisiana, and of several European nations, are adaptations of it to their countries.

THE CANON LAW.—This is the public and general Code of Laws of the Roman Catholic Church.

COMMERCIAL LAW—sometimes called Mercantile Law and the Law of Merchants.—This is said to be "the system of law which the Courts of

England and the United States apply to mercantile contracts. It is a branch of the common law, inferior in importance to no other, and, in many respects, quite distinct from any other. The principal objects embraced within it are the law of shipping, including that of marine insurance, the law of negotiable bills of exchange, and promissory notes, and the law of sales." This book aims to comprise a summary of this law, and of other titles of the law, of equal importance to large producers and mercantile men.

INTERNATIONAL LAW.—Commerce is largely affected by it. It rests mainly in the expositions of treaties and the treatises of learned jurists. It prescribes laws touching peace and war, intercommunication, the rights of neutrals on the high seas, the conditions of an effectual blockade, etc., etc. It is a great pity that it has no sanctions—no tribunal to enforce it as between nations. The last argument of nations is War.

COURTS OF ADMIRALTY.—Their jurisdiction embraces much maritime law—such as the enforcement of liens of seamen for their wages, and of material, men, etc., upon ships and vessels, salvage, etc., etc.

BUSINESS SUCCESS.—How to be sought.—A thorough knowledge of the contents of this book is far from being the only knowledge—extremely efficient as it must be—needed for success. Success in business does not mean merely the acquisition of competence or wealth, unless they be dignified by a peaceful conscience, the love of friends and the respect of community. The knowledge of and obedience to every human law will not insure these better blessings. And then, again, a man whose conduct in business is kept strictly within and measured by the law, however able he may be, is in great danger of business failure. A reputation for honesty beyond law, and for strict integrity, is imperishable capital—it will add to and extend his business—it will sustain him in the fluctuations of trade, and make his fortunes superior to accidental reverses. In the eye of Honor, a just debt is not cancelled by the Statute of Limitations, and a release by composition of one's creditors leaves the balances to be paid on the return of prosperity.

ACCOUNTS, ORDER.—The business success of any one who is destitute of order and ignorant of accounts is improbable in the extreme, and its occurrence must be regarded as a freak of Fortune, akin to a miracle. A great business requires a great intellect for its due conduct. The truly mercan-

tile mind demands order, and, on his premises, insists upon the orderly transaction of business, and the preservation and arrangement of all correspondence papers and instruments, so that any one of them, however ancient, may be found in an instant; and such a keeping of the accounts of stock, of sales, of cash, that he may have, whenever he requires it, a perfect balance sheet, or a particular account of any transaction in his business. Without order, there must be ignorance and confusion, than which nothing can be more embarrassing, more injurious to reputation, or more fatal to success.

CONCLUSION.—To the proprietor of this worthy book I wish the joy he will find in knowing that it has answered the honorable ends it is designed for. I hope that every honest student of it may, in the near future, look upon it as a chief contributor to his acquirement of honor and wealth in the business of the world.

G. W. CLINTON.

ALBANY, Sept. 1, 1882.

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CONTRACTS.

1. Contract.—A contract is a deliberate agreement between competent persons upon a legal consideration to do, or to abstain from doing, a particular thing.

2. Primary Elements.—The primary elements of a contract are: 1st, the agreement; 2d, the consideration; 3d, the thing or things to be done or omitted.

3. Secondary Elements.—The agreement is a compound, and is divided into three simple elements: 1st, the persons; 2d, the legal ability; 3d, the assent. Every contract, therefore, contains five essential elements, as follows:

	Primary Elements.	Secondary Elements.
Contract.	1st. Agreement.	{ 1st. The persons.
	2d. Consideration.	{ 2d. The legal ability.
	3d. The thing or things to be done or omitted.	{ 3d. Their assent.

4. The Persons.—There must be two or more persons to every contract.

5. Their Ability.—It is not only essential that there shall be two or more persons to every contract, but it is also necessary that these persons shall have the legal ability to make a contract. Persons are natural or artificial. Corporations and States are artificial persons. Corporations can make only such contracts as they are empowered to by their charters. States can make such contracts only as their constitutions warrant, and their agents cannot bind them beyond their authority. Persons who are not of legal age cannot, in general, make contracts. But when

of age they may, in certain cases, affirm and ratify contracts made in infancy. The contract of marriage may be entered into under age, the age and circumstances being matter of State regulation. Idiots and insane persons cannot make contracts.

6. Their Assent.—The mutual assent of the parties, called “the union of minds,” is a necessary element in every contract. Legal assent requires to be mutual, without restraint, fraud or mistake. A mere offer, without assent, is not a contract; there must be an acceptance of the offer. Assent may be given even by a nod, or the shaking of hands, or the blow of a hammer at an auction, or in case of a deaf and dumb person, by a sign. Indeed, the saying that “silence gives consent” is in certain cases applicable to the law of contracts.

7. Proposition.—When a person wishes to make a contract with another, the first step is to make a proposition. This is a mere offer, and so long as it is not assented to it is not binding upon either person, and may be withdrawn. When the proposition is verbal, and without any stipulation as to time, it is not binding unless accepted *at once*. Because a person is willing that his offer shall be accepted at the time he makes it, and under the circumstances existing at that time, is no reason that he should be willing at another time and under other circumstances. But if custom, or the previous dealings of the parties, imply an intention to give time, an acceptance within a reasonable time will be sufficient.

A proposition to pay a certain sum for the return of articles which have been lost or stolen, may be accepted at any time by the return of the articles and a demand for the reward, provided the offer has not been revoked. But such an offer is not considered as binding for an unlimited time, but is restricted to what would be considered a reasonable time under the circumstances.

8. Option or Refusal.—To give a person the option or refusal of property at a certain price, is to give him a specified time in which to make up his mind whether he will accept the proposition or not. In such case, in order to make the offer binding he must accept within the specified time. But the party

making the proposition, or giving the refusal, has the right to retract his offer any time previous to its acceptance and sell to another if he chooses, and this he may do within the time for which the refusal was given. The reason of this is, that the offer is gratuitous and there is therefore no consideration to support it.

The acceptance of the person having the option within the time, and before the withdrawal of the offer, must either be expressed or implied from his acts or words in order to make it binding. A. offers, by letter, to sell to B. one thousand bushels of No. 2 corn, at sixty cents per bushel, and B. answers, "I will take it." This is assent. But if B. says: "I will give you sixty cents per bushel for No. 1 corn," it will not be assent, but a new offer. C. writes to D., offering to buy flour of him at six dollars per barrel. D. intends to accept, but does not answer; there is no agreement.

9. Sales on Trial.—These are executory agreements, by which the person is to have a certain length of time in which to examine and test the property to ascertain whether it suits him or not, with the privilege of returning within, or at the expiration of, that time if it is not satisfactory. In legal effect he says, "I will keep and pay for it, if it suits me." In these cases it is held that the seller has no power to withdraw his offer during the time for which it was given. The buyer has the right of trial during the whole time, and the right to accept at any time before the expiration of the time which was given.

10. Revocation of Option.—A revocation may be made any time before acceptance. This may be done by formal notice, as where the parties communicate by letter, or verbally where they are together, as at an auction. A proposition is also revoked by the death of the person making it before acceptance. But notice of revocation is not always necessary. A. made an offer, by letter, to B. to sell him his apple crop, at a named price, giving him an option of five days. B. called upon A. within the five days and accepted the offer. A. replied that he had been negotiating with C., and refused to sell to B. The offer of A. to sell to C. was, in effect, a revocation of his offer to B.

11. Propositions by Letter.—When persons are distant from each other it is customary to make propositions by letter, and when so made the offer may be accepted any time before notice of withdrawal if within a reasonable time, provided the offer is not limited. The person making the offer can retract if his letter withdrawing the offer reaches the other person before he has mailed a letter of acceptance, or telegraphed an acceptance. But, if a letter of acceptance is dropped in the Post-office, and one retracting the offer is immediately after received, the contract is binding between the parties. So, also, where merchandise is ordered by letter, if the order is filled and the goods are placed in the hands of a carrier before notice of retraction, the contract is completed and binding between both parties. And if the person of whom the goods were ordered, not having them, should order them from a third person, the first person would be liable to him for any responsibility he assumed which was incident to the filling of the order.

12. The Acceptance.—It is not only necessary that there should be an acceptance, but it must be according to the terms of the proposition; any other would be more of the nature of a new proposition than an acceptance. When an acceptance is sent by letter it takes effect from the time it is mailed and not from the time it is received. An acceptance cannot be revoked, because as soon as the proposition is accepted, if then open, the agreement is completed and the contract is then binding. Acceptance of a proposition may be either *express* or *implied*.

13. Express Assent.—When the proposition is accepted, either verbally or in writing, in a formal manner, it is an *express* assent, and is binding between the parties. Express assent is not affected by custom or usage of trade.

14. Implied Assent.—The law does not require express assent, but it will raise an implied assent when justice and reason seem to demand it. And custom and usage will have much to do with implied assent, as where they indicate intention upon the part of the person who makes the offer to give a reasonable time, the offer may be accepted within a reasonable time. So

where a draft is drawn upon A. payable thirty days after sight, and A. having refused acceptance, it is accepted for the honor of the drawer by B., there is an implied assent on the part of the drawer to indemnify B., if he has to pay the draft. And where a judgment is secured against A., B. and C. as co-sureties, and A. is made to pay the whole sum, he can recover a proportional share from B. and C., upon their implied promise to re-imburse for their shares.

15. Mistake of Law.—It is well established, both at law and in equity, that a contract made under a mere mistake of law is not thereby vitiated. Every man is presumed to know the law, and ignorance of it is, therefore, in general no excuse. This principle, however, has application only to contracts permitted by law and untainted by fraud.

16. Refusal of the Proposition.—Refusal of the proposition annuls the offer, and relieves the party making it from all liability concerning it, and places both parties in the same position as they were before the proposition was made, so that the party to whom the offer was made cannot afterwards withdraw his refusal, and then make an acceptance. Nor has any other person a right to accept an offer but the person to whom it is made. An offer to buy certain goods of A., at a given price, is not binding if accepted by B.

17. The Parties Bound.—The parties bound by a contract are only those who are parties to it, or have privity of interest in it sufficient to create reciprocal obligations, relating to the same transactions. But the original parties, or some of them, may sometimes be substituted by others who take their places. This is done by the *assignment* of a contract; or by *indorsement*, in the case of negotiable paper.

18. Mistake of Fact.—When a contract is made under an injurious mistake of fact it is voidable. Mr. Justice Story says: "As every man is presumed to know the law, and to act upon the rights which it confers, when he knows the facts, it is a culpable negligence in him to do an act, or make a contract, and then set up his ignorance as a defense. But no person can be

presumed to be acquainted with all matters of fact, nor is it possible by any degree of diligence to acquire that knowledge, and, therefore, ignorance of facts does not import culpable negligence." A palpable and plain mistake of fact entitles the mistaken person to avoid the contract. As where the indorser of a note which did not specify any *place* of payment, received a notice of *protest* of the note, and paid the note, supposing he was liable, but afterwards found that the note was presented at maturity, at the *former place of business* of the maker *only*, which was held to be not a good presentment, and, therefore, he was not liable, and the payment was made under a mistake of fact, which entitled him to recover back the amount he had paid.

19. The Consideration.—The consideration is that which induces the parties to bind themselves by the contract, and is either a benefit to the promisor, or an inconvenience or injury to the other party. It may be either *valuable* or *good*. It is not necessary that it should always be expressed; it may sometimes be implied.

20. Valuable Consideration.—A valuable consideration may consist of money, or other property to be paid, or of something to be done, or of some injury or inconvenience to be endured. A promise to marry is a valuable consideration. The parties to the contract may use their own discretion in regard to the adequacy of the consideration.

21. Good Consideration.—This may be either blood relationship, or natural love or affection, which will support the contract as between the parties when executed, but will not be sufficient to support an action to enforce an executory contract.

22. Sufficiency of Consideration.—The sufficiency of the consideration is generally found in its being a benefit to the promisor, or a loss or detriment to the promisee. It is not necessary that the promise and consideration should be equivalent in value. If the consideration has a legal value it does not signify how insignificant it may seem to be. It is not absolutely necessary that the promisor should receive any benefit in order to

make it a sufficient consideration to support a promise. Any person may make himself liable by endorsing negotiable paper, although he receives no benefit himself. So, also, in the case of a guarantor; if the promise is made at the time the debt is contracted he will be liable for the payment. But if a person promise to do something himself for which he is not to receive any consideration, and he fail to do it, there is no cause of action against him.

23. Forbearance.—Forbearance may be a sufficient consideration to support a promise. As where one agrees to wait a certain or reasonable length of time before commencing a suit for the collection of a well-founded claim, it is sufficient to support a promise made by the debtor. So, if a third person agree to pay the debt of another, if the creditor will give him a reasonable amount of time, it is a sufficient consideration to support the promise. When forbearance operates as a benefit to the one party, or an injury to the other, it is sufficient to support a promise.

24. Mutual Promises.—Mutual promises will support each other if they are made simultaneously. If made at different times, they are not a good consideration for each other. The liability arises from mutuality of obligation; one cannot be bound unless the other is. Reciprocal promises, as of marriage, are binding, for the reason that one promise forms the consideration for the other.

25. Moral Obligation.—A pre-existing moral obligation is a sufficient consideration to support an *express* promise. As where a legal debt which once existed has become outlawed by the statute of limitations, an *express* promise to pay it will restore the liability of the debtor. So, also, the promises of an adult person to pay debts which he contracted before he became of age. And an express promise made by the drawer or indorser of a draft to pay, although he be not liable, for want of notice, will renew his liability.

26. Statute of Frauds.—The English Statute of Frauds, which has been adopted in most of the States, enacts that : “No

action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." This is held *not* to apply to *original* promises, but only to *collateral engagements*, or cases where a *debt* already exists on the part of a *third person*. As in the case of a note already given to A. by B.; a promise from C. to pay must be in writing, to be binding. If A. tells B. to deliver goods to C., saying: "I will pay, if he does not," or "I will see you are paid," it is a mere offer of suretyship or guaranty, and is a *collateral* undertaking, which comes within the statute; but it is otherwise if he says: "Charge them to me," or "I will pay." The latter is an *original* promise, and need not be in writing. No consideration is necessary, so far as the person who guarantees is concerned, if it is a benefit to the person in whose favor the promise is made. This statute does not apply in cases where an original promise is made at the time the debt is created. The statute of frauds also provides that no sale shall be binding unless the buyer shall first accept part of the goods so sold, and actually receive them; or, 2d, give something in earnest, to bind the bargain, or in part payment; or, 3d, that some note or memorandum, in writing, of the said bargain, be made and signed by the parties, or their agents. The writing must state the promise, and also the consideration. Where goods exist in the condition in which they are to be delivered, and the delivery is to take place in the future, a sale of such goods comes within the statute.

27. Things to be Done or Omitted.—The thing to be done must be legal, that is, it must not violate either the common law or the statute law. Contracts may be void on account of *fraud*, or on account of *immorality*, or when in violation of *positive law*, or *public policy*.

28. Void on Account of Fraud.—Fraud has been defined to be "every kind of artifice employed by one person for the

purpose of wilfully deceiving another to his injury." Every contract which is tainted by fraud is vitiated both in law and in equity. And all such contracts are voidable by the person whom it was intended to perpetrate the fraud upon. If he choose to avoid the contract he must do so at once, after having knowledge of the fraud; for if he goes on with the contract after having knowledge of the fraud, he cannot afterwards avoid it. The party who perpetrates the fraud cannot avoid the contract on that ground. ✓

29. Contracts in Restraint of Trade.—A contract in general restraint of trade is void, as being against the public good. The reason is, "that the tendency of such agreements would be to promote monopolies, to check competition, enterprise and industry, and to deprive the public of beneficial services and labors." It would also tend to promote pauperism. "A. gave a bond, by which he bound himself never afterwards, in his own name, or in the name of another, to conduct, carry on, use, or employ, the art, trade or occupation of an iron-founder or caster, or to be concerned, interested, or employed, directly or indirectly, in any manner, whatsoever, or under any pretense, whatsoever, in the business of founding or casting in iron." It was held to be void, as being against public policy. But an agreement for partial restraint of trade for a valuable consideration, if reasonable, is valid.

30. Contracts Void for Other Causes.—Contracts may be rendered void for being in *opposition to public policy*, or for *impeding the course of public justice*, *restraint of marriage*, or for *bringing about marriage*, or for being *contrary to the insolvent acts*, or for *immorality*.

31. Construction of Contracts.—Contracts derive their force from the mutual assent of the parties to the *terms* of the contract. It therefore becomes necessary to get at the *intention* of the parties at the time they entered into the agreement. This is done by a fair construction of the language used in the contract. A liberal construction is given to all commercial contracts, and especially to negotiable paper. If the terms of a contract

are ambiguous, the law will supply what seems to be necessary to get at the intention of the parties. Usage or custom, when general, and not in violation of the principles of law, will often aid in explaining the intention of the parties to a contract.

32. Defenses.—Any violation of the essential requisites of a contract, or any omission of a necessary element, will render the contract void, and is a defense to any claim that may be set up. There are also other defenses besides these to actions upon a contract. These defenses are generally enumerated as follows: 1st, *Performance*; 2d, *Payment*; 3d, *Receipts*; 4th, *Accord and Satisfaction*; 5th, *Arbitrament and Award*; 6th, *Pendency of Another Action*; 7th, *Release*; 8th, *Tender*; 9th, *Statute of Limitation*; 10th, *Set-off*; 11th, *Recoupment*.

33. Performance.—The person to perform is he who is bound by the contract, and who can discharge his legal liability by the performance of some act. If, for instance, a party is bound to pay a certain sum of money, it is not sufficient that he is ready to pay, he must either pay or tender payment to the party who is entitled to receive it. But if suit be commenced to enforce the payment, the money must be paid into court to be an effectual defense on the plea of tender. Whatever the legal obligation may be, either to pay a certain sum of money, or do a particular thing, it must be done according to the legal construction of the contract. When all has been done that can legally be required the contract is discharged.

34. Manner of Performance.—Every contract is to be performed according to the terms of the agreement, as it was understood and assented to at the time it was made. The understanding of the agreement by the parties, and their assent thereto, are to be inferred from the terms of the contract, and the circumstances under which the agreement was consummated. If there are express stipulations in a contract they must be strictly performed, and whatever a party agrees to do, he must do with proper skill, so that some benefit shall arise from it.

35. Time of Performance.—Time is an important element in the performance of a contract, especially when delay would

cause loss or injury. If the time is definitely fixed in the agreement, and one of the parties chooses to deviate from it, it devolves upon him to prove that the time was not important; otherwise, it must be done within that time. When the word *month* is used in contracts it is understood to mean a *lunar* month, except in negotiable paper and commercial contracts, when a calendar month is intended. When the performance of a contract is specified to be a certain length of time after date, the day upon which it was dated is to be excluded in computing the time. When a party is to do something on a certain day, he has the *whole* of the day to do it in, and no action can be brought against him until the whole day has expired. But a day at a bank means during banking hours.

36. Place of Performance.—When a particular place is mentioned where the act is to be performed, the person who is under legal obligation to perform must either be there himself or have an agent there to perform. If the promise be to pay a certain sum of money at a bank he must have a sufficient sum in the bank, or be there and tender the sum, before the expiration of banking hours. If no place is mentioned where payment is to be made, then the rule is, that the debtor must seek out the creditor to make it.

37. Non-Performance.—If the thing promised is impossible of performance, or illegal in its character, generally the party is not bound. But if he contract to do something which is impossible for him, but possible for others to do, he is bound to have it done. If, however, he take upon himself a legal obligation, and the performance is rendered impossible by an act of God, it will be a good defense. Where one party violates a contract the other may generally rescind it if it be an *entire* contract.

38. Payment.—Payment is another defense that may be interposed to the enforcement of a contract.

Payment to be legal must be made to the person to whom it is rightfully due, or to his attorney, or his legally appointed agent, or to a legally appointed trustee. Payment must generally

be made in money, and, if demanded, in such money as is *legal tender* in relation to the debt which it is to pay. If, however, other currency or property is accepted as payment by the creditor or his authorized agent it will discharge the debt. Part payment of a debt in money with an agreement by the creditor that it shall cancel the whole debt, if done *before* the debt is due so as to be a benefit to the creditor, is binding, but if made *after* the debt is due, there is no consideration to support it, and it will not be binding.

39. Giving his own Negotiable Security.—If the debtor give his own note, or bill of exchange, or other negotiable security, it only operates as a conditional payment, unless the creditor expressly, or impliedly, agree to take it as *payment*. But the creditor who receives such security is obliged to hold it until maturity, unless transferred, and, if it is not paid when properly presented, must see that it is properly protested, and notice is sent to the proper parties, or the debtor will be discharged. But, if the paper is taken as payment, and is then dishonored, the original debt will have been discharged.

40. Note or Bill of a Third Person.—If the creditor receive the note or bill of a third person from the debtor of his own choice, there being no necessity, it will be considered as payment of the debt, and he can have no recourse against the debtor unless he required him to indorse the paper, and then his claim would be against him as *indorser*, and not on the original debt. But, if the creditor can show that he received the paper as security only, and it afterwards turns out to be worthless, the debtor must bear the loss.

41. Receipts.—A receipt is *not absolute* proof of payment. It may be set aside on the ground of mistake of facts, falsity, or fraud, and is open to rebuttal by parol evidence. In this respect an exception is made to the general rule that written evidence cannot be varied by parol. It is now well established that such evidence is here admissible.

42. Accord and Satisfaction.—Accord is an agreement that the payment of a certain sum, or the doing of a certain act

by one party, should be accepted by the other in full satisfaction of his claim or demand.

But accord *without satisfaction* is no defense. The parties may compare their accounts and agree as to the exact amount due from one to the other, and the debtor may promise to pay at a certain time, but, until payment is actually made, it will not operate as a defense.

43. Arbitrament and Award.—This is commonly called arbitration, and signifies an investigation and determination of a matter in controversy by persons chosen by the contending parties. The parties may submit the matters in dispute to arbitration, either by a written or verbal agreement. Where an award has been made that a certain sum of money shall be paid as damages at some specified time in the future, it can be pleaded as a defense any time before the expiration of the time agreed upon for such payment.

44. Pendency of another Action.—If a suit has been commenced against a person in one Court, another suit cannot be brought against him by the same person for the same cause in the same or another Court until the first is withdrawn. So, also, a *judgment* is a good defense to a suit brought by a party for the same cause, even if the two actions are different in form.

45. Release.—A release is a relinquishment of some right or claim by some person in favor of another. No particular form of words is necessary to constitute a release. It may be made by an express agreement between the parties, or it may result from the operation of law. Verbal contracts may be released by parol. Written contracts require a written release, and contracts under seal require the release to be under seal. A release may be for a part of a debt or for the whole. When the *principal* of a debt is released, the *interest* will generally be released also, unless there be a separate contract for the interest. A release given by one of several joint creditors will discharge the debtor from all. So, also, a release given to one of several joint debtors will discharge all. A release may result from operation of law; 1st, by assuming relations between the parties inconsistent with the relation of debtor and creditor either by marriage, or by death,

or by appointment ; 2d, by taking a higher security, as where a note is given in place of a book account. This is a *merger*, and the book account is said to be merged in the note ; 3d, a material alteration of the contract by one party without the consent of the other.

46. Tender.—A tender is an offer of a sum of money in satisfaction of a debt or claim, by producing the exact amount and offering to pay it to the creditor or person claiming it.

When a legal tender is made before a suit is commenced, it operates as a good defense against the costs of the suit, damages, and interest on the debt after the tender is made, but is not a defense as to the debt. But to have this effect, the tender must be pleaded and the money tendered must be paid into Court. The tender may be made by the debtor or by his agent, either to the creditor himself or to *his* authorized agent. The tender must be of the *whole amount* and not of a part. It must be *absolute* and not coupled with any conditions. Tender to be legal must be made in gold or silver, or in United States Treasury Notes. Bank bills are not a legal tender if the creditor object to them on that ground. But National Bank Currency is legal tender for some purposes, as in payment of all *taxes* and *excises* and all other *dues* to the United States except *duties* on *imports*, and, also, for all *salaries* and other *debts* and *demands* owing by the United States to individuals, corporations and associations within the United States, except *interest* on the *public debt*.

47. Statute of Limitations.—The legislature of any State has the right to change the common law, and within the limits of the constitution of the State, and of the United States, to legislate upon any matter not embraced in the common law. The laws enacted by the legislatures of the States are called *Statutes*, and, inasmuch as they are made by different bodies, they frequently differ in respect to the same subject in different States.

The *statute of limitations* enacts that, after the lapse of a certain period of time, no action can be sustained at law for the enforcement of a claim, but the party entitled to its benefit may waive by omitting to plead it. If not waived, it is a perfect

defense to all claims which are not prosecuted within this limited period of time. This period of time differs in different States on claims of the same kind, and also differs in the same State on claims of different kinds. In the State of New-York the period is six years in all actions arising out of contracts, express or implied. The statute does not extinguish the debt, but it prevents any prosecution of the claim after the expiration of the time. The statute begins to run upon a debt from the moment it is due, and there is a complete cause of action. Upon a note or a bill of exchange it begins to run from the last day of grace. On a note payable on demand it begins on the day of its *date*. Where a promise is conditional, it begins to run from the happening of the condition. It begins to run, on a contract to do something in the future, from the time of its breach.

As soon as the statute commences to run, it continues until an action is commenced, or the time expires which prevents the action.

But, if, when the debt falls due, the debtor is absent from the State, it does not commence to run until he returns. In the State of New-York, if the debtor moves out of the State during the time the statute is running, the time of his absence is not counted; but, if he return, it begins where it left off, when he moved from the State. So successive absences of the debtor may be deducted from the statute limitation.

After the statute has run its full time, and the *legal* remedy has been lost, still the *moral* obligation exists, and an *express* promise to pay will renew the liability without a new consideration. So, also, a *part* payment of the debt, if *voluntarily* made by the debtor, will renew the legal obligation to pay the balance. A payment on account of interest, on an outlawed debt, will have the same effect. In the State of New-York it is held that, if a payment is made on a note by one of its *joint* and *several* makers, before the expiration of the statute, it will not prevent the statute being set up as a defense on the part of the other. When a payment is made on a debt, the statute commences to run again from the time of the payment, the same as if it were a new contract.

48. Set-Off.—A set-off is a cross claim upon which a separate action might be brought in favor of the defendant against the plaintiff. This defense is created by statute; it does not exist at common law. A debt cannot be used as a set-off, unless it is actually due at the time it is so used. A debt need not be of the same nature and degree in order to be so used, but they must be mutual and due in the same right. A debt due to a partnership cannot be set off by a private debt of one of the partners. Nor can a person, who is sued as an administrator, use a debt due to himself as a set-off.

49. Recoupment.—This term was introduced by the New-York code of procedure. It includes set-off, and, also, a right of recovery against the plaintiff in the same action, of damages for breach by him of the agreement sued on, or growing out of the transaction on which the action is founded. A note was given for the purchase of timber which was standing in a fallow, and the seller agreed to indemnify the purchaser against any loss that might happen from burning the fallow. The fallow was burned, and the timber was damaged. Suit was brought by the seller for the collection of the note, and it was held that the maker of the note had the right to recoup.

FORMS OF CONTRACTS.

Form No. 1.

50. Contract of Building.

Memorandum of agreement made this day of one thousand eight hundred and between A. B., of merchant, of the first part, and X. Y., builder, of the second part. The said party of the second part covenants and agrees to, and, with the said party of the first part, to make, erect, build, and finish in good, substantial, and workmanlike manner, on the lot belonging to the party of the first part, and known as No. in street, one brick house agreeable to the draft, plan, and explanation hereto annexed, of good and substantial materials (or of such materials as the party of the first part may find and provide

therefor), by the day of next. And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of dollars, lawful money of the United States, as follows: the sum of (*here state terms of payment*).

(If the owner is to furnish materials, add: and, also, that he will furnish and procure the necessary materials for the said work, in such reasonable quantities, and at such reasonable time, or times, as the said party of the second part shall or may require).

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of dollars, as liquidated damages to be paid by the failing party.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands (and seals) the day and year first above written.

Signed, sealed, and delivered {	
in presence of }	(Signatures.)

FORM No. 2.

51. Contract for Land.

Articles of agreement, made the day of in the year one thousand eight hundred and between of the first part, and of the second part, witnesseth, that the said party of the first part ha agreed to sell and convey, and do hereby agree to sell and convey to the said party of the second part, and legal representatives, all that certain piece or parcel of land.

This agreement is upon the express condition, viz.: The said party of the second part shall first pay to the said party of the first part, or legal representatives, the full sum of in manner following, that is to say: which sum or sums, at the time, and in the proportion before stated, with the lawful interest on all sums unpaid, the said party of the second part covenant well and truly to pay; and for the payment thereof the said party of the second part bind in the sum of

Provided the aforesaid sum shall be paid with the interest, at the times and manner above mentioned, the said party of the first part covenant that will convey to the said party of the second part, and legal representatives, the above described premises, by a good and sufficient Deed containing a covenant of Warranty.

Nevertheless, if the aforesaid purchase money be not paid as above specified, then the said party of the first part may retain all previous payments then made, and repossess of the premises, at any time after thirty days after default. The Deed is to be subject to all taxes imposed or assessed upon the premises after the date hereof, which said taxes the said party of the second hereby agree to pay.

IN TESTIMONY WHEREOF, The said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

Signed, sealed, and delivered }
in presence of }

FORM No. 3.

52. Contract with a Clerk or Workman.

This agreement, made this day of 18 between A. B., of of the first part, and C. D., of of the second part, witnesseth: That the said A. B. agrees faithfully and diligently to serve the said C. D., as clerk, in the store of said C. D. (*or otherwise*), at for the period of from and after the day of next, for the sum of dollars per . In consideration of which service, so to be performed, the said C. D. agrees to pay the said A. B. the sum of dollars per month (payable as follows: on the day of and on the day of each month following, during said term, and at the expiration thereof, the balance of such sum as has not then been already paid).

And it is understood and agreed, that the death of either of them occurring prior to the expiration of said term of shall terminate this agreement.

IN WITNESS WHEREOF, etc.

FORM NO. 4.

53. Agreement for Sale of Personal Property.

This agreement, made this day of 18 between A. B., of , farmer, and P. S., of , merchant, witnesseth: That the said A. B., in consideration of the agreement hereinafter contained, to be performed by P. S., agrees to sell and deliver to the said P. S., at his storehouse in (*here specify the goods, and, if desired, the quality and quantity*), on or before the day of 18 . And the said P. S., in consideration thereof, agrees to pay to the said A. B., the sum of dollars per for said immediately upon the completion of the delivery thereof.

IN WITNESS, etc.

FORM NO. 5.

54. Contract for Sale of Farm and Mill.

Articles of agreement made this day of 18 between D. F., of the town of in the county of and State of of the first part, and O. C., of the town aforesaid, of the second part, witnesseth: That the said party of the first part hereby agrees to sell to the said party of the second part his house, farm, and premises, whereon he now lives, situate in the town of containing about acres, more or less, together with the crops growing on the same; all the lumber for the house, all the tools belonging to the saw-mill, together with every article attached to the freehold, for the sum of dollars, which the said party of the second part agrees to pay, as follows, viz.: dollars upon signing this agreement; dollars by the day of next; dollars on day of next, and giving a mortgage on the farm whereon he now lives for dollars, in equal annual payments, with annual interest on the same; at which time the said party of the first part is to make and execute to the said party of the second part, a good and sufficient warranty deed for the premises hereby sold, upon the delivery of which the said party of the second part is to secure the remainder, to wit: dollars by a bond and mortgage for the payment of the remaining sum, in equal annual installments, at which time the said party of the second part is to have full possession of the premises

IN WITNESS, etc.

NEGOTIABLE PAPER.

55. Negotiable Paper.—This term embraces promissory notes, due bills, drafts, checks, certificates of deposit, bills of exchange, bank bills, treasury notes, otherwise called greenbacks, and other similar paper payable to order, or to bearer. The promissory note is a mere evidence of debt, coupled with a promise to pay it. Bills of exchange and the other instruments above named are used for the transfer of money. The use of negotiable paper as the representative, and in lieu of money, is enormous, and no one is fit for a commercial or business employment of any magnitude, who is not familiar with its various kinds, with their application and uses, and with the principles of law relating to them.

56. Its Origin.—The needs of commerce gave rise to the different forms of negotiable paper.

Mere barter or exchange of articles of property and services probably preceded the use of money as the representative of value; but when, by extension and by the common recognition of money, traffic had become regular between distant tribes and nations, it assumed the dignity of commerce and required for its facilitation credit and the transfer of credit and money by paper. It may be that in some form or forms negotiable paper was in use by the merchant of the caravan, who, on its way to Egypt, bought Joseph of his brethren. But it is supposed by some writers that the bill of exchange first came prominently into use in about the middle of the fourteenth century, and that the promissory note was of a later origin.

57. Negotiability.—The peculiarity of negotiable paper is, that the title to it can be transferred from one person to another by indorsement and delivery, or sometimes by delivery

alone. This can only be done when words are used which make it negotiable. The words which are commonly used are "order" or "bearer." That is, it is made payable to some person's order, or to him or his *order* (as "pay to the order of Wm. Dunn," or, "pay Wm. Dunn or order"), or, in the latter case, using the word "bearer" in place of "order," or simply making it payable to "bearer." If made payable to Wm. Dunn, omitting *order* and *bearer*, it is not negotiable, and can only be collected by *Dunn* or his agent. The statute law of some States requires that certain *other* words shall be used in promissory notes in order to make them negotiable within such States. In New Jersey a note must contain the words "without defalcation or discount." In Missouri, "negotiable and payable without defalcation or discount," must be inserted. In Virginia a provision was enacted in 1873 which provided that only such notes shall be negotiable within that State as "are payable in the State at a particular bank, or at a particular office thereof, for discount and deposit, or at the place of business of a savings bank or savings institution." Other states have different statutory requirements which, of course, must be conformed to in the particular States.

58. Promise to Pay.—An acknowledgment of a debt alone does not constitute negotiable paper; there must be a *promise* to pay, or an *order* upon some other person to pay a certain sum of money. But as no particular form of words is necessary, it has been held sufficient where a person promises to be responsible, or accountable, for a certain sum. The promise must be for money alone, and not to pay in goods. The amount must also be definite, and not be left uncertain.

There must be no contingencies or conditions about the payment so as to make it doubtful. A promise to pay a certain sum upon the arrival of a steamer at Buffalo, which is to sail from Chicago, is not negotiable paper. But a promise to pay a certain number of days after the death of a certain person is negotiable.

59. Promissory Notes.—A negotiable promissory note is a written agreement, or promise, made by one person to pay to another person named therein, or order, or to the bearer, uncon-

ditionally, a certain sum of money, at some specified time. The value and importance of a promissory note as a circulating credit in the commercial world depends chiefly upon its being negotiable. Notes are generally made negotiable by being made payable to the *order* of some person, as James Smith or order, or to the maker himself or order, or James Smith or bearer, or by being made payable to *bearer* simply, without naming any person. In the two latter cases, they are payable to the holder. Notes should be written with ink, but if written with pencil they are held to be good at law.

60. Responsibility of Maker.—The responsibility of the maker of a note—or the acceptor of a draft—begins with the person to whom it is made payable, who is the *original* holder, and extends to all the *subsequent* parties to whom it may be transferred by indorsement and delivery. His liability is sometimes greater to one holder than it might have been to another, for the reason that if a note is transferred for value before maturity, it cuts off cross claims and other defenses which might have been set up if it had remained in the hands of the original party.

61. A Subsequent Party.—The law gives to the *subsequent* parties certain rights which it does not confer upon the *original* party. The note in the hands of the *payee* is but a simple contract, subject to all the circumstances under which it was given, which were known to the parties. There may be some good reason why the note could not be collected if it remained in the hands of the payee until maturity. But, if it is transferred *before* maturity, the person receiving it is not supposed to know that any such reason exists, and has a right to presume that it is in all respects good, and the law will protect him. And any other person receiving it from him will hold it *free* from all defects, and the law will enforce its payment. The transfer cuts off the defects of the note.

62. In Good Faith.—The subsequent party who receives negotiable paper from the original payee will not, however, hold it free from defects, if he knows, or has reason to be-

lieve, that the title was not good in the hands of the party from whom he receives it. He must receive it in good faith, in order to be entitled to the advantages conferred by its negotiability. That is, he must take it without any knowledge or suspicion of any wrong, otherwise his title will be no better than that of the person from whom it came. This is the general rule, but "accommodation paper" does not come under this rule; it may be bought with the knowledge of its being such, and yet the title will be good. It must be remembered, also, that the transfer of negotiable paper, even before maturity, will not remedy *all* defects. If, for instance, the maker's name is forged, or if it is signed by a person who is not legally competent, as a married woman, or an infant, the transfer will not make it good. The defects which are overcome by the transfer do not appear in the paper itself, but are circumstances connected with it which, if known, would vitiate the title.

63. Transfer after Maturity.—Negotiable paper may be, and sometimes is, transferred *after* maturity, but, when so transferred, it does not carry with it the peculiar qualities which make it so valuable if transferred *before* due. If it remains in the hands of the original payee until it falls due, it is then deprived of those advantageous qualities which it possessed *before maturity*. Immediately upon becoming due, if it remain in the hands of the original payee, it becomes *fixed* as a simple contract debt, subject to all the equities of an ordinary debt, and it cannot be divested of these defects by being transferred to another person.

64. Manner of Transferring.—Generally speaking, there are two ways of transferring negotiable paper. *First*, if it is payable to some persons, or order—as it generally should be—it cannot be transferred without the person to whom it is payable writing his name across the back of the note, or draft, and then delivering it to the person who is to receive it; *second*, if it is payable to some person or bearer, or, if it is payable simply to bearer, it can be transferred by delivery alone. But, if the payee choose, he may write his name on the

back when it is payable to bearer. The effect of this will be explained under *indorsement*.

65. Date.—The date is an important part of negotiable paper, especially where it is made payable a certain number of days or months *after date*. The day upon which a note or draft is made is not counted in computing the time; but it is the period *from* which the time is counted to find the day upon which it becomes due and is payable. If the date is omitted, it does not destroy the note or draft, but it then devolves upon the holder to prove as nearly as possible at what time the contract was made. The date means the *day*, the *month*, and the *year*.

66. Time.—The promise of payment must be definite as to time. It must be at some fixed period, or at the happening of some event, which is inevitable. It may be payable at sight, or a certain number of days after sight, or on demand, or at any other time where the period is fixed by usage or law. If a note does not specify any time or day of payment, the law deems it payable on demand, and, where it is payable on demand, it is not necessary that a formal demand be made; it is sufficient to bring a suit for collection.

67. Person.—There should be no uncertainty as to the person to whom payment is to be made in a note. His name should appear in the note. It is also essential that the name of the person who is to pay the note should be signed to it. The signature may be made by himself, or by any person who is authorized by him to sign his name for him. The person who makes the promise to pay must be competent to make such a contract. A person may be *naturally* or *legally* incompetent. Idiots and lunatics are *naturally* incompetent. Aliens and infants—persons not of legal age—and married women in some States are *legally* incompetent. In a few of the States legislation has given married women the right to carry on business in their own names. An unmarried woman is legally as competent to make contracts as a man.

68. The Amount.—The amount which is promised to be paid should be definitely specified, and is generally expressed,

both in words and figures. The words expressing the amount appear in the body of the note, and the figures at the upper or lower left hand corner. If there is any discrepancy between the amount expressed in the words and the figures, the law assumes that the words express the correct amount, for the reason that a person would be less likely to make a mistake in writing the words than in putting down the figures. But in a case reported in Michigan, where there was a dispute as to whether the word expressing the amount was *fifty* or *sixty* dollars, it was *held* that, where the words are obscurely written, and are uncertain and ambiguous, it is for a jury to decide what the words are, after hearing the evidence of the circumstances connected with the giving of the note.

69. Consideration.—No contract is good unless there is a consideration. A promissory note is a simple contract; therefore, it is void without consideration. But this is only true as between the original parties to the note. If a negotiable note was *originally* given without any consideration, and afterwards comes into the hands of an innocent holder before maturity, for a valuable consideration, the holder's title will be good, and he can recover; although the party to whom it was first given could not enforce the collection of it if it remained in his hands until maturity. This doctrine is considered indispensable to the security and circulation of negotiable paper. So, also, if a note or draft, which had been lost or stolen, and was indorsed in blank, or payable to bearer, come into the hands of a person through a business transaction without any knowledge or suspicion of any wrong, he has a good title to it. But if he receive it without giving any money or other value for it, his title is no better than that of the person from whom it was received.

70. Form.—No particular form is necessary in writing a promissory note, but it must conform to the foregoing requirements so far as to constitute a promise to pay a certain sum of *money* at all events, and must not interfere with any statute regulation. The mere acknowledgment of a debt without any promise to pay is not a promissory note. Neither is a promise to pay a certain sum in merchandise a promissory note. But where a note was written "Borrowed of I. S. \$50, which I promise *not*

to pay," it was held that the word *not* should be rejected, and that the note was good.

71. FORM No. 6. (Negotiable.)

	\$2,000 ⁰⁰ .	Buffalo, N. Y., June 1, 1882.
	Sixty days.....after date I promise to pay	
	C. L. Brown.....or order	
	Two Thousand.....DOLLARS	
	Value received.	
No. 33.	S. S. Guthrie.	

72. FORM No. 7. (Not negotiable.)

	\$1,000 ⁰⁰ .	Buffalo, N. Y., June 1st, 1882.
	Three months.....after date I promise to pay	
	W. H. Glenny.....	
	One Thousand.....DOLLARS	
	at Bank of Buffalo. Value received.	
No. 48.	S. S. Burt.	

The two notes here given illustrate common forms of promissory notes. No. 6 is made payable to C. L. Brown, *or order*, and is therefore negotiable. No. 7 is payable to W. H. Glenny, and is *without* the word *order* or *bearer*, and therefore is *not* negotiable, and can only be collected by Mr. Glenny or his agent.

73. The Payee.—The payee is the person to whom the note is made payable. In the first note, C. L. Brown is the *payee*. In the second, W. H. Glenny is the payee. The payee or any other owner of a note is also called the *holder*. The name of a payee is not always expressed in the face of the note, and when not expressed, and the note is payable to *bearer* simply, then any person who is the rightful holder is the payee.

74. The Maker.—The maker of a note is the person who signs it, and becomes responsible for the payment. The maker of the first note is S. S. Guthrie, and S. G. Burt is the maker of the second. The maker binds himself to pay the amount specified in the note to the person who is entitled to receive it on the day of maturity. He is under no obligation to pay it before maturity; but if he should pay it before it became due, and omit to take it up, any person who should take it for value before maturity, not knowing it had been paid, could hold the maker responsible for its payment. And if the previous holder had given the maker a receipt acknowledging the payment before maturity, it would not invalidate the claim of the subsequent holder.

75. A Due Bill.—A due bill is a written acknowledgment and evidence of a debt. It may be payable in money or in goods, or in any kind of personal property. It may be payable at sight, or on demand, or at a specified time in the future. When payable in money it is much of the nature of a note. It is one of the simplest forms of negotiable paper. The following are common forms:

76. FORM No. 8. (For money.)

	\$400 ⁰⁰ .	New-York, <i>July 1st, 1882.</i>
	<i>Due Henry Duncan, or order, for value received,</i>	
	<i>Four Hundred</i>	<i>DOLLARS</i>
	No. 17.	<i>Peter Cooper.</i>

77. FORM No. 9. (For goods.)

	\$50 ⁰⁰ .	Albany, N. Y., <i>July 6, 1882.</i>
	<i>Due John C. Howland, for value received,</i>	
	<i>Fifty</i>	<i>DOLLARS</i>
	<i>payable in goods from my store, on demand.</i>	
No. 64.	<i>C. S. Rockwood.</i>	

78. A Draft.—A draft is a written order, or open letter of request, written by one person, and directed to another, requesting him to pay a certain sum of money to a third person, or to his order, or to the bearer.

79. A Bill of Exchange.—A bill of exchange is the same thing as a draft, and is only another name for it. The commercial meaning of the one is just the same as the other. Drafts or bills of exchange are of two kinds, namely: inland and foreign. Frequently the word *exchange* is dropped, and they are simply called inland bills and foreign bills.

80. An Inland Bill.—An inland bill is a draft which is drawn and payable in the same country or State. Any draft which is to be paid within the jurisdiction of the laws relating to it where it was drawn, is an inland bill.

81. A Foreign Bill.—A foreign bill is one drawn in one country and payable in another, or drawn in one *State* and payable in another. These are called *foreign*, because the laws relating to and governing negotiable paper are not the same in different countries nor in different States. Any draft or bill is considered foreign when the laws governing it are different at the place of payment from those at the place where it was drawn. Remittances can generally be made much more cheaply and safely by drafts than by sending money. If a draft is lost a duplicate can be obtained, and therefore no loss will be sustained. When remittances are made to foreign countries by draft, it is customary to draw two or three for the same amount, which are duplicates of each other, and send each by a different ship, so that one will be sure to reach its destination.

82. Form of Draft.—As in a note so, also, in a draft no particular form of words is necessary. The forms have varied at different periods. The form of a draft is unlike that of a note, for the reason that the draft is a request or order upon another person to pay; whereas, a note is a direct promise by the maker to pay. The following will illustrate a common form:

83. FORM No. 10.

	\$500 ⁰⁰ .	New-York, May 1, 1882.
	At ten days sight pay to the order of	
	S. S. Rogers.....	
	Five Hundred.....	DOLLARS
	Value received, with current rate of exchange.	
To J. P. Dudley, No. 133. Buffalo, N. Y. } Ind. P. Penn.		

84. The Parties.—The parties to negotiable paper are of two kinds, *original* and *subsequent*. The original parties to a note are *two* in number, viz.: the *maker* and the *payee*. The original parties to a draft are *three* in number, viz.: the *drawer*, the *payee*, and the *drawee*. In the foregoing draft John R. Penn is the *drawer*, S. S. Rogers is the *payee*, and J. P. Dudley is the *drawee*. These are the *original* parties to the draft. Those who receive it afterwards by indorsement are the *subsequent* parties.

85. The Number.—The number of a note, or draft, represented in the foregoing draft by “No.” in the lower left hand corner, is inserted by the person who writes it up; that is, the maker of the note, or the drawer of the draft.

Every merchant keeps a blank note-book, and draft-book, and, when he fills up a note, or a draft, for issue, he numbers it, and the stub, from which it is taken, alike, and also notes on the stub the substance of the note, or draft, as the case may be. The numbers of the notes or drafts issued, and of the stubs from which they were taken, are, of course, consecutive, and correspond with each other.

86. Theory of Draft.—When a draft is drawn the supposition is that the drawee, or person upon whom it is drawn, has funds in his hands belonging to the drawer, or is indebted to him, and will accept the draft, or pay it, as the case may be.

Sometimes, however, drafts are drawn by agreement between the drawer and drawee where there is no indebtedness on the part of the drawee.

Drafts are sometimes drawn upon the supposition that the drawer *will have* funds in the hands of the drawee before the draft will be presented to him.

87. Liability of Parties.—A person may be *absolutely* liable, or *conditionally* liable, on negotiable paper. He is absolutely liable when he delivers to the payee his positive promise to pay as the maker of a note or the acceptor of a draft. He is conditionally liable when he gives to the payee his order upon some one else to pay, or endorses a promise or request to pay. The maker of a note is absolutely liable, the drawer of a draft is only conditionally liable; that is, he is liable, provided the person drawn upon—the drawee—refuses to pay. The drawee is not liable at all until he has *accepted* the draft.

88. An Acceptance.—When a draft is written up and put into the hands of the payee, it is a request or order to pay, directed to a third person. If it is payable at sight, no acceptance is necessary, except in those States which allow days of grace on sight drafts. The laws of the different States are not uniform in this respect. In New-York days of grace are not allowed on sight drafts. In Massachusetts they are allowed. But, if a draft is made payable a certain number of days *after sight*, it must be presented by the holder, or his agent, to the drawee for acceptance, because the day upon which it is *accepted* is the period from which the time is to be reckoned instead of the date. The drawee signifies his willingness to pay the draft at maturity by writing across its *face*, “accepted,” with the *date* and his *signature*. This is generally written with *red* ink, probably to attract attention; but the legal effect is the same with any kind of ink. This writing across the face is called “an *acceptance*,” and is an absolute promise to pay at maturity; and, therefore, the drawee is *absolutely* liable, as soon as he accepts and delivers the draft. If the draft is payable a certain number of days or months *after date*, it will fall due without acceptance, and it is not obligatory to present

it, but, as there is no principal debtor until accepted, it is better even then to have it accepted. If the drawee wants a reasonable time to determine whether or not he will accept, the bill may be left with him until the next day, and, if he should refuse to deliver the bill when called for, he can be held as an acceptor. When a bill is drawn on *two* persons who are not partners it should be presented for acceptance to both. An acceptance in a *legal* sense is a promise to pay.

89. Form of Acceptance.—The form of acceptance depends upon the law of the place where it is made. No particular form of words is necessary, but it must import acceptance, and comply with any statute requirements of the place. The Statute of New-York requires that the acceptance shall be in writing, and be signed by the acceptor or his agent. The acceptance may be *absolute* or *conditional*. As the drawee is only liable in accordance with the acceptance which he makes, it follows that the bill is affected, in the hands of any person who may hold it, by the conditions of the acceptance. Therefore, if a bill of exchange is accepted on condition that the drawee receive money from the drawer before maturity to pay it, the holder cannot enforce collection without first proving that the money was received. The following form will illustrate the arrangement and wording of an acceptance which in business is written across the *face* of the draft.

90. FORM NO. 11. (Acceptance.)

	\$500 ⁰⁰ <i>Five hundred</i>	New-York, May 1, 1882.
	I hereby accept and agree to pay to the order of	
	<i>J. P. Dudley</i>	
	 DOLLARS	
	Value received, with current rate of exchange.	
To <i>J. P. Dudley,</i> No. 133. Buffalo, N. Y. } <i>Ina. B. Penn.</i>		

91. Presentment for Acceptance.—When the payee receives a draft payable a certain number of days after sight, it is his duty to present it for acceptance within a reasonable time. It must be presented by the holder or his agent. It is to be presented to the drawee or his authorized agent. If the draft is drawn on a partnership it may be presented to any one of the partners. If drawn on two or more persons who are not partners, it should be presented for acceptance to each person. A draft may be presented any time during the business hours of the day, but no presentment can be made on a Sunday or a legal holiday. The place for presentment is at the residence of the drawee, or at his place of business, generally at the latter. The holder is under no obligation to receive a conditional acceptance, and can demand an unconditional and absolute one, according to the tenor of the bill.

92. Non-Acceptance.—Non-acceptance is a refusal by the drawee to accept the draft when presented, and the draft is then called *dishonored*. Immediately upon the dishonor of the bill it becomes the duty of the holder, if it is a foreign bill, to have it *protested*, and send notice of the protest to all the parties who are conditionally liable. This protest should be made by a notary public, and he should present the bill and make the demand himself. If, however, no notary public can be found, it may be presented and protested by any respectable citizen in the presence of witnesses. It is customary with banks and business men generally to have all paper that is dishonored, either by non-acceptance or non-payment, protested, and to notify all parties whom it is intended to hold responsible for the payment of the paper. The protest must be made out on the same day the paper is dishonored, and the notices must be sent as soon as the day following. If there is any neglect in having the bill protested, or in sending the notices, all who are not properly notified will be discharged, and the holder must submit to his loss.

93. A Protest.—A protest is a formal declaration made by a notary public against any loss that may be sustained in consequence of the non-acceptance of the draft. The protest

must be made out in accordance with the law of the place where it is done. In cities and villages a notary public is generally employed to do the business. Let us suppose that the holder of the following draft (Form No. 12) presented it to the drawee on the third day of June, 1882, and demanded acceptance, and that acceptance was refused by the drawee.

94. FORM No. 12.

	\$1,000 ⁰⁰ .	Chicago, Ill., June 1st, 1882.
	Thirty days after sight pay J. C. Barnes, or order,	
	One Thousand	DOLLARS
	and charge to account of	
	To C. H. Jones, No. 6. Buffalo, N. Y.	} C. R. Andrews.

This draft having been presented to C. H. Jones for acceptance, and he having refused to accept it, it was then placed in the hands of Charles E. Austin, a notary public, who demanded payment, and made out the following protest, to which the draft or a copy of it should be annexed:

95. FORM No. 13.

United States of America,
STATE OF NEW-YORK, } ss.
CITY OF BUFFALO.

Be it Known, that on the third day of June, in the year of our Lord one thousand eight hundred and eighty-two, at the request of J. C. Barnes of Buffalo, I, Charles E. Austin, a Notary Public duly admitted and sworn, dwelling in the City of Buffalo, County of Erie, and State aforesaid, presented the annexed draft of E. R. Andrews on C. H. Jones

for one thousand _____ Dollars,
at the office of C. H. Jones, No. 1000 Main Street, to himself, and demanded acceptance thereof, which was refused. Whereupon,

I, the said Notary, at the request aforesaid, did Protest, and by these presents do solemnly Protest, as well against the Maker and Endorser of the said draft as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest, already incurred and to be incurred by reason of the non-acceptance thereof.

And, I, the said Notary, do hereby certify that on the same day and year above written, I deposited in the Post-office in said City of Buffalo, and paid the legal postage thereon, Notice of the foregoing demand, non-acceptance and Protest, partly written and partly printed, signed by me, and folded in the form of letters, as follows, viz.:

<i>Notice for E. R. Andrews.</i>	<i>Directed,</i>	<i>Chicago, Ill.</i>
<i>do for.....</i>	<i>do</i>	<i>.....</i>
<i>do for.....</i>	<i>do</i>	<i>.....</i>
<i>do for.....</i>	<i>Enclosed to</i>	<i>.....</i>
<i>do for.....</i>	<i>do</i>	<i>.....</i>

Each of the above named places being the reputed place of business or residence of the persons to whom the said notice was directed respectively, and the nearest Post-office thereto.

In Witness Whereof, I have hereunto subscribed my name, and affixed my seal of office, in the presence of John Doe and Richard Roe, Witnesses, "In Testimonium Veritatis."

CHARLES E. AUSTIN,

Notary Public.

96. Notice of Non-Acceptance.—As soon as the protest is made out, notices are to be sent to all the persons whom it is intended to hold responsible for the payment of the draft. In this instance the drawer is the only person to whom it is necessary to send a notice, but it often happens that there are several indorsers to be notified. No person can be held responsible for the payment unless notice is sent him as early as the next day after protest. The following is a form of notice:

97. FORM No. 14.

Please to take Notice: *Buffalo, June 3d, 1882.*

That _____ a draft
drawn by _____ yourself on _____
C. H. Jones, of Buffalo, N. Y., _____

for the sum of _____
One Thousand _____ DOLLARS,
dated *June 1st, 1882*, was this day *Protested* for non-acceptance, and that the holder looks to you for the payment thereof, acceptance having been duly demanded by me and refused.

Very respectfully,

Chas. C. Austin,
Notary Public.

Ja C. H. Andrews,
Chicago, Ill.

98. Acceptance Supra-Protest.—If the drawee refuses to accept the draft when it is presented to him, we have seen that it is necessary to have it protested immediately, and to send notice to every person whom we expect to look to for payment. As soon as the draft is protested, any friend of the drawer who may wish to prevent him from being sued, and to save the credit of the draft, may offer to accept it for *the honor of the drawer*. When this is done it is called an acceptance *supra-protest*, which means an acceptance *after* it was *protested*. Such an acceptance may be made either for the *drawer* of the bill, or for one of the *indorsers*.

To illustrate an acceptance *supra-protest*, let us suppose that the following form is the identical one of "Form No. 12," then the acceptance would be written across its face in red ink, as follows:

99. FORM No. 15.

 	\$1,000 ⁰⁰ .	Chicago, Ill., June 1st, 1882.
	Thirty days after sight pay J. C. Baines, or order,	
	One Thousand	DOLLARS
	and charge to account of	
	To C. B. Baines, } C. B. Andrews No. 6 Buffalo, N. Y.	

This acceptance of the draft is held to be a *conditional* promise to pay on the part of Mr. Miller. The holder keeps the draft until maturity, the same as if the drawee had accepted, and then presents it to the *drawee* for payment. If he refuses to pay, the draft must be protested for non-payment, the same as if he had accepted and then refused to pay.

The same general form of protest is used for non-payment as for non-acceptance. The holder of a draft is not obliged to accept the offer of any person to make an acceptance *for honor*. If the drawee refuses to accept he can commence proceedings against the drawer at once.

If the original drawee does not pay the draft at maturity, the person who accepted *supra-protest* must be notified within the legal time—twenty-four hours—or he cannot be held liable.

100. Bank Depositors.—In the larger cities when a person wishes to deposit money with a bank he is required to furnish references as to his character and integrity. If these are satisfactory he will be requested to write his name in a *signature book*, giving his name in the same hand and style that he will sign his checks. This is to enable the *teller* of the bank to judge correctly of the signatures of any checks that may be presented at the bank for payment which are signed in the depositor's name. And especially that the *teller* may compare any doubtful signature with the genuine one in the signature book. This is an essential precaution, inasmuch as the bank is responsible for the genuineness of the signatures to all checks which are paid. When an account is opened in a bank with a partnership, the firm-name is

written in the signature book by each member of the firm who is allowed to sign partnership checks, and his individual name is written in connection therewith.

101. Methods of Depositing.—There are several different methods of depositing money in a bank, each of which has its advantages and disadvantages. When money is deposited in a bank some voucher should be taken from the bank by the depositor as a receipt for the money. The voucher is sometimes a *bank-book*, and at other times a certificate, or simply a receipt, occasionally a *teller's check* is taken.

102. Bank Book.—When a person deposits money with the intention of drawing checks as a means of payment, instead of using currency, he usually takes a bank-book as a voucher. This is a little book, convenient to carry in one's pocket, which is commonly furnished by the bank, and in which the *teller* of the bank enters all sums of money left by the depositor. This little bank-book generally has printed across the top of the double page something like the following, viz.:

"Dr. **BANK OF BUFFALO**, in account with . Cr."

In the blank space is written the depositor's name, and each sum deposited, with the date, is placed on the left hand page of the book. This entry indicates that the *bank* is debtor to the *depositor* for the amount so entered. Nothing is written in this book except by the teller of the bank. The convenience of taking a bank-book is, that money can be drawn out by check at any time without presenting the book. As each successive sum of money is deposited the depositor fills out a *deposit-ticket* showing the amount of the deposit, and hands the *ticket* with the *money* and *book* to the teller, who enters the date and amount in the bank-book. If a note is left for collection, it is usually entered by the collection clerk in the back part of the bank-book, giving date, maker's name, maturity, place of payment, and amount. When it is collected, the amount, less the charges for collection, is placed in the book as a regular deposit. It may be here stated that most business men do not consider it necessary to keep an

account with a bank in their general account books. The bank-book and the records of deposits and checks which are usually kept on the back of the stubs in the check-book, being quite sufficient for all necessary information, and as vouchers.

103. Checks Paid.—When the depositor's checks are paid by the bank they are not at that time entered in the depositor's bank-book, but are filed away, and all entered on the right hand page of his book at the end of one, two, or three months, according to custom. At intervals of customary time the depositor leaves his bank-book with the bank, when all the checks which have been paid are entered, and the book is balanced by entering—usually in red ink—the difference between the amount of the deposits, and the checks, under the paid checks on the right hand side. The bank-book is then ruled up, and the balance in bank is brought forward on the *left* hand side of the book similar to the first entry. When the bank-book is again called for by the depositor, all the cancelled checks are returned with the book.

104. Deposit Ticket.—A deposit ticket is a printed memorandum with blank spaces for inserting name of depositor, date, and amount of funds deposited. It generally has printed upon it a description list of the kinds of funds deposited as per form following. These deposit tickets are furnished by the bank for the use of the depositors, and should be filled up by the depositor, according to the printed divisions on the ticket and the amount extended. The deposit ticket is a great convenience to the bank teller. He compares the amount, as counted by himself, with the amount on the ticket, and, if any question arises as to the accuracy of the figures in the depositor's bank-book, he has the deposit ticket as a voucher.

The deposit-ticket often proves as useful to the depositor as it is to the teller. He may at some time, for instance, discover that there is a mistake in his cash account, and may hastily come to the conclusion that there must have been a mistake in entering his deposit in the bank-book. In such case nothing could be more convincing than to see his deposit-ticket which was filled out by himself.

105. FORM No. 15^a.
DEPOSITED IN
BANK OF BUFFALO.

By

Buffalo, 188 .

<i>Currency,</i>			
<i>Checks,</i>			
<i>Drafts,</i>			
<i>Amount,</i>			

106. Checks.—A check is a written order upon a bank, directing that a certain amount of money be paid to a person mentioned therein, or to his order, or to bearer. A check is one of the simplest forms of negotiable paper. It may, or may not, be negotiable. There is no uniform rule for the wording of checks, either when printed or written. Sometimes the words “or order” are used after the payee’s name, sometimes “or bearer,” and sometimes they are made payable to *bearer*, without mentioning any payee by name. If both *order* and *bearer* are omitted, the check is not negotiable. Checks are always drawn on banks or bankers, and are always payable at sight, and, therefore, never need *acceptance*. It is customary with business men to have their checks made up in book-form, and generally they are printed payable to the *order* of the person to whom they are made payable. But the loose checks, which are kept by the

bank for the use of their customers, are generally printed payable to bearer. When a check is payable to bearer the bank does not take upon itself any responsibility as to the identity of the holder. Prudent business men keep most of their money deposited in bank, reserving only a sufficient amount to meet small expenses. All payments of any considerable amount are made with checks. A record of each check should be kept on the stub from which it is taken in the check-book; this history should be *full* and *explicit*. The following is a common form of check:

107. FORM No. 16.

	No. 55.	Buffalo, N. Y., June 6, 1882.
	FIRST NATIONAL BANK,	
	Pay <i>J. N. Matthews</i> , or order,	
	Two Thousand.....DOLLARS	
	\$2,000 ⁰⁰ .	<i>W. P. Coleman.</i>

108. Checks as Receipts.—When a check is made payable to the payee, or order, it must be indorsed by the payee before payment; that is, the person to whom it is payable must write his name across the *back* of the check. Banks generally require all checks to be indorsed whether they are payable to order or bearer. When a check is paid by a bank, it is cancelled with a stamp, but not destroyed. The cancelled checks are returned to the depositor when his bank-book is balanced up, and they answer as vouchers to the drawer, especially when they were made payable to the payee or order, and come back from the bank with his endorsement on the back. The indorsement is evidence of payment to the indorser, and the check therefor is a receipt.

109. Certified Checks.—The presumption is that when a check is drawn upon a bank there is enough money in the bank to the credit of the drawer to meet it. This is not always true. Sometimes business men draw checks when they know they have not a balance to their credit in the bank large enough to pay

them, but they expect they will be able to deposit enough before their checks are presented for payment. Unscrupulous persons frequently draw checks and attempt to pass them, knowing that they have no money in bank to meet them, and never intending to deposit funds to meet them. Business men are not safe, therefore, in taking checks from strangers unless the checks are "certified." To get a check "certified" it should be presented to an officer of the bank; generally the cashier certifies. If the balance to the credit of the drawer of the check is large enough to meet it, he will write across the face of the check the word "certified," and sign his name below it as cashier. More commonly, perhaps, the certification of the check is made by writing across its face, as follows, viz.: "Good when properly indorsed," and signed by the cashier. This makes the bank responsible for the payment of the check, even if the drawer contrives to get his money out by drawing other checks before the certified check is presented for payment. If a bank certifies a fraudulent check it will be liable for it. The certification of a check is much of the same nature of an acceptance of a draft, the holder looks to the bank for security instead of the drawer, and generally the bank charges up the check to the drawer when it is certified.

The following form will illustrate the manner of certifying a check:

110. FORM No. 17.

	\$500. ⁰⁰ / ₁₀₀ .	Buffalo, N. Y., Sept. 1, 1882.
	BANK OF COMMERCE.	
	Pay to Henry Wells, or order,	
	Five Hundred & ————	50. ⁰⁰ / ₁₀₀ DOLLARS
No. 55.	W. H. Clark.	

Handwritten notes on the form:
 Cashier
 J. C. Hayes
 J. C. Hayes

111. Cash Checks.—Business men generally treat checks the same as bank currency, counting them as cash, and depositing them with the currency as cash. When a check is received on account of a debt the obligation of the debtor is not dis-

charged if the check is not paid, unless there was an agreement to that effect between the parties. The check is regarded as a means of getting the money, but not as payment until the money is received, provided the holder of the check is guilty of no neglect. When a check comes back from the bank into the hands of the debtor, with the creditor's name indorsed on the back, it is evidence of payment.

112. Forged Checks.—It has already been stated that banks require their depositors to write their names in the signature book, so that they may have a criterion by which to judge of the correctness of the signature. The responsibility is entirely with the bank, and the teller must be able to identify each signature. If the signature to a check is forged no one has any claim upon the person whose name was forged, and if a bank pays such a check the loss will be its own. A forged signature cannot be ratified by the person whose name was forged, because the act is criminal, and the ratification of it would be opposed to public policy.

113. Raised Checks.—Checks are sometimes written so carelessly that they afford every opportunity for inserting a word and a figure, by which to make it express a larger sum of money. This is sometimes done, and the check is then said to be *raised*. If a check has been raised above the amount for which it is drawn, and is paid by a bank, the drawer of the check will be liable for the whole amount paid, if he contributed to the alteration by carelessly leaving space for inserting a word and figures to increase the amount; but if properly written, only the original amount of the check can be charged to the drawer.

114. When Payable.—Generally, no time of payment is specified in a check, and it is held to be payable immediately upon presentation. When received in the same place where it is payable it should be presented for payment as soon as the following day; if held longer, it will be at the risk of the holder. If a check is not presented for payment within a reasonable time, and the bank fails, the holder must bear the loss if there was money in the bank to meet it. Checks should be dated the day upon which they are drawn, and if made payable some time

in the future, the time should be stated in the body of the check. If a check is dated ahead, it is worthless until the arrival of the date, but it may be good when that time arrives.

115. Certificate of Deposit.—A certificate of deposit is a receipt given by a bank certifying that the depositor has left with the bank a specified amount of money to be paid to him or to his order, on the return of the certificate properly indorsed. Checks cannot be drawn against certificates of deposit, as in case of a bank-book, nor can less than the full amount be drawn conveniently, but they are convenient for deposits which are made for safe keeping for a specified time, and they may be used for making remittances, but are not generally as convenient for that purpose as drafts. The following will illustrate a common form of certificate of deposit:

116. FORM No. 18.

	No. 135.
	BANK OF BUFFALO.
	<i>Buffalo, N. Y., June 10, 1882.</i>
	<i>C. L. Foster, has deposited in this Bank</i>
	<i>Five Thousand..... DOLLARS</i>
	<i>payable to the order of himself.....</i>
	<i>in Currency on return of this Certificate properly en-</i>
	<i>dorsed. .</i>
	<i>\$5000⁰⁰</i>
	<i>P. Lyman, Wm. Cammell,</i> Teller. Cashier.

117. Teller's Check.—Deposits are sometimes made for which a teller's check is received. The theory of such a transaction is that the money deposited is placed to the credit of the teller; instead of the depositor, and then the teller draws his check for the same amount payable to the depositor or order. This check is negotiable, and is equivalent to a certified check so far as establishing its value is concerned.

118. Special Deposit.—In the several methods of depositing already mentioned, the bank is under no obligation to return the same money, nor is it expected that it will be kept and returned to the depositor. But he can make a *special* deposit of a package of money or other valuables, and have the same identical thing returned to him when called for. When a special deposit is made, the bank has no right to use it in any way, and in some cases the use of such deposit is made a criminal offense.

119. Certificate of Stock.—A certificate of stock in a bank, or in any other joint-stock or incorporated association, is a written instrument which certifies that the person named therein owns a certain number of shares of the capital stock of the bank or association. A certificate of bank stock is generally signed by the president, and it is evidence of ownership to the amount specified. The shares are generally one hundred dollars each. Certificate of Stock :

120. FORM NO. 19.

CAPITAL, \$300,000.	STATE OF NEW-YORK. No. 15. Fifty Shares.
	MERCHANTS' BANK OF BUFFALO. <i>This Certifies that Clarence L. Clarke is proprietor of Fifty Shares in the Capital Stock of the</i> MERCHANTS' BANK OF BUFFALO, <i>transferable at the said Bank by the said Stockholder or by his Attorney on the return of this Certificate.</i> <i>Buffalo, N. Y., 10th day of July, 1882.</i> <i>A. F. Wright, President.</i>
SHARES, \$100 EACH.	

121. Voting by Proxy.—The directors of a bank are chosen at an election held by the stockholders, at which election each stockholder is entitled to cast a certain number of votes in proportion to the whole number as his number of shares is to the whole number. When a stockholder cannot be present at the election, he generally appoints some one as his proxy to vote for him as follows :

122. Proxy.

FORM No. 20.

Know all Men by these Presents, That I, Clarence L. Clarke, do hereby constitute and appoint A. P. Wright Attorney and Agent for me and in my name, place and stead, to vote as my Proxy at the next election for Directors of the Merchants' Bank of Buffalo, according to the number of votes I should be entitled to vote if then personally present.

In Witness Whereof, I have hereunto set my hand and seal, this twenty-fifth day of August, one thousand eight hundred and eighty-two.

Clarence L. Clarke.

Sealed and delivered in presence of

Warren P. Prentice.

123. Transfer of Stock.—The certificate of stock specifies that the holder may transfer his stock at the bank himself, or it may be done by his attorney. The following will illustrate the form for appointing an attorney for that purpose :

124. Transfer of Stock.

FORM No. 21.

Know all Men by these Presents, That I, Clarence L. Clarke, do hereby constitute and appoint Reuben Heacock my true and lawful Attorney for me and in my name to sell, assign, transfer and set over all my right, title and interest in and to Fifty Shares of the Capital Stock of the Merchants' Bank of Buffalo, as represented by Scrip No. 15, hereby ratifying and confirming all that my said Attorney may do by virtue thereof.

Witness my hand and seal, this twentieth day of September, in the year one thousand eight hundred and eighty-two.

Clarence L. Clarke.

WITNESS :

Geo. H. Davis.

125. Foreign Bills of Exchange.—These are generally drawn in "sets." That is, two or three bills are drawn for the same sum of money, but they are so written that, when one of the "set" is paid, it cancels them all. Foreign bills are drawn in the currency of the country where they are payable. The reason they are drawn in sets is, that one may be sent by one

ship, and a second by another, and so on, so that, in case the first is lost, another may reach its destination. Formerly they were drawn in sets of *three*, but, at the present time, very few banks draw more than *two*, and some draw only a *single* draft. Foreign bills do not differ in principle from ordinary inland drafts. The following forms will illustrate a "set" consisting of *two*:

126. FORM No. 22.

CITY BANK.	Exchange for £ 1000 ⁰⁰ .
	<i>Buffalo, N. Y., July 8, 1882.</i>
	<i>At Sight of this first of Exchange (second un-</i>
	<i>paid) pay to the order of Hon. Sec. W. Clinton</i>
	<i>One Thousand Pounds Sterling</i> -----
	<i>Value received and charge the same to account of</i>
	<i>F. H. Scott,</i>
	<i>To The Union Bank,</i> <i>Cashier City Bank.</i>
	<i>London, England.</i>
	No. 620.

127. FORM No. 23.

CITY BANK.	Exchange for £ 1000 ⁰⁰ .
	<i>Buffalo, N. Y., July 8, 1882.</i>
	<i>At Sight of this second of Exchange (first un-</i>
	<i>paid) pay to the order of Hon. Sec. W. Clinton</i>
	<i>One Thousand Pounds Sterling</i> -----
	<i>Value received and charge the same to account of</i>
	<i>F. H. Scott,</i>
	<i>To The Union Bank,</i> <i>Cashier City Bank.</i>
	<i>London, England.</i>
	No. 620.

128. The Protest and Notice.—The protest and notice of a *foreign* bill when not accepted, or when not paid, should be made and given by a notary public. And, although the law merchant does not require that an *inland* bill should be formally protested by a notary public, but only that the drawer and indorsers should be notified of the refusal to accept and pay, yet, by custom, and by the statutes of various States and countries, the notarial certificates of demand, and the protest thereof, are made presumptive evidence, and, therefore, are almost universally so demanded. The object of the protest and notice is to fix the liability of the parties who were conditional debtors. The protest should be made on the very day the demand is made and refused, and notices of protest should be sent to all to whom it is intended to look for payment the *same* day, or the day following. Notice is generally given to the parties it is intended to hold in *writing*, but it may be *verbal*. The notice should designate the particular draft or note so distinctly, that the party receiving it cannot be mistaken as to the identity of the paper.

129. Business Paper.—Negotiable paper is divided into *two* classes, namely: *business* and *accommodation*. Business paper is that which is given for value; that is, where there is a real indebtedness to the extent of the sum expressed in the paper, and the payee holds the paper as evidence of such indebtedness against the drawer or acceptor of the bill, or the maker of the note. Such paper is founded upon a real business transaction, and it is as good in the hands of the original payee, as in the hands of any subsequent holder.

130. Accommodation Paper.—If A. makes and delivers his own note to B., merely to enable B. to use it for his own benefit, and with the understanding that B. will provide for and pay it at maturity—A. simply lending his name and credit for the accommodation of B.—such a note, or bill, is accommodation paper.

A. will not be bound to pay such a note, if it remain in the hands of B., because there is no consideration. But, if it passes into other hands before maturity, he will be bound to

the holder the same as if there had been a good consideration. If it were not so, the note would not serve the purpose for which it was given, namely, the loan of A.'s credit for the benefit of B. Should B., before the maturity of the note, place money in the hands of A., wherewith to pay it, he could not afterwards withdraw the money without the consent of A., and, if he should make an assignment, A. could hold the money for payment of the note.

131. Value Received.—These words are commonly used in negotiable paper, but they are not indispensable. The presumption of the law is, that all negotiable paper is given for value, whether it is so expressed or not. The burden of proving a want or failure of consideration, or an illegality of consideration for negotiable paper, always rests upon the party who sets up that defense. When these words are used in a note or bill they mean that the value was received from the payee by the maker, or drawer, but it is always subject to proof.

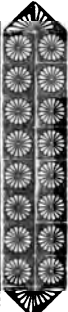
132. Order or Bearer.—The commercial privileges of negotiable paper have received the most liberal construction from the courts, but upon the condition that it shall contain one or the other of these words.

It is optional with the parties whether they use the word "*order*" or "*bearer*." If the paper is made payable to the payee, or "*order*," it cannot be transferred to another, except by the indorsement of the payee. That is, the payee must write his name across the back in order to convey the title to another. If it is made payable to the payee, or "*bearer*" the title can be transferred by delivery, without indorsement. When paper which is payable to bearer is stolen or lost, any person who takes it from the thief or finder, in the regular course of business, for value, without any knowledge or suspicion of its having been stolen or lost, will have a good title to it, and can enforce the payment without being under any obligations to the original owner. Obviously, therefore, for the holder's protection, it is the safer way to have all negotiable paper made payable to his order.

133. Maker or Makers.—A note may be made by one person, or by two or more persons. When it is signed by one person only, it is called an *individual* note. When signed by two or more persons it may be a *joint*, or a *joint* and *several* note.

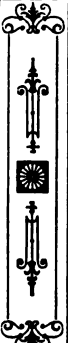
134. Individual Notes.—These may be written in many different forms relating to time and place of payment, etc. The following will illustrate a common form :

135. FORM No. 24.

	\$600 ⁰⁰	Buffalo, N. Y., July 1st, 1882.
	Thirty Days after date I promise to pay to	
	the order of Hon. George W. Clinton.....	
	Six Hundred.....	DOLLARS
	at First National Bank, Albany, N. Y.	
Without defalcation, value received.....		
No. 20.	Wm. P. Sherman.	

136. Joint Notes.—When two or more persons sign a note it will depend upon the wording of the note whether it is a *joint* note, or a *joint* and *several* note. The following form is a *joint* note only:

137. FORM No. 25.

	\$1200 ⁰⁰ .	Rochester, N. Y., June 10, 1882.
	Two Months after date we promise to pay	
	to the order of Philip Becker.....	
	Twelve Hundred.....	DOLLARS
	at the Bank of Commerce, Buffalo, N. Y.	
Value Received.		
No. 8.	John W. White, Henry S. Walker.	

138. Joint and Several Notes.—It is frequently much safer for the holder of a note that it should be made both joint and several, so that the makers may be sued either jointly or severally thereon. The following two notes are *joint* and *several* notes :

139. FORM No. 26.

	\$1000 ⁰⁰ .	Buffalo, N. Y., April 5th, 1882.
	Six Months after date we jointly and severally	
	promise to pay James Adams.....or order	
	One Thousand.....	DOLLARS
	at White's Bank, Buffalo, N. Y.	
	Value Received.	John H. Williams,
No. 3.	Heiam S. Bronson.	

140. FORM No. 27.

	\$800 ⁰⁰ .	Buffalo, N. Y., April 5th, 1882.
	Sixty Days after date I promise to pay to	
	the order of P. P. Pratt.....	
	Eight Hundred.....	DOLLARS
	at the Bank of Commerce, Buffalo, N. Y.	
	Value received.	Chas. Grant,
No. 17.	J. S. Cole.	

141. Firm Notes.—When a note is signed in the name of a partnership it is generally a joint note, whether it is written "I promise to pay" or "we promise to pay." And when a note is written, "we jointly or severally promise to pay," the word *or* is construed to mean "and," in which case it is a *joint* and

several note. Firm notes are good as against the partnership when given by one of the partners, provided they are given for something which comes within the scope of the partnership business, but when given for something outside of the partnership business they are only good as against the individual partner who signed the note.

142. Interest Notes.—A note does not draw *interest* until *after* maturity, unless it is written “with interest,” or some equivalent phrase. Neither of the foregoing notes would draw interest until after maturity.

143. Indorsements.—Indorsements are made for the purpose of transferring the title or ownership of negotiable paper from one person to another. This quality of transferability gives to negotiable paper its great value and importance in commerce. The payee of a note or other negotiable paper may transfer his title to another person by writing across the back of it his own name, and then delivering it to the other person. Indorsements are generally made before the maturity of the paper, but they are sometimes made after. When no date is connected with the indorsement the presumption is that it was made before the paper fell due. When the payee of negotiable paper has indorsed a note or bill, he is then called the *indorser*, and the person to whom he transferred the title is called the *indorsee*.

144. Effects of Indorsement.—There are *two* distinct effects produced by the indorsement of negotiable paper. The first or *primary* effect is to transfer the title to the paper from the *indorser* to the *indorsee*. The next or *secondary* effect is to make the indorser *conditionally liable* for the payment of the paper. The indorsement is a contract by which the indorser makes himself liable to the *indorsee* and *every subsequent holder*.

145. Liability of Indorser.—There is an implied guarantee on the part of every indorser, in favor of, and with the indorsee and every subsequent holder. *First*, that the paper itself, and all the names thereto, are good and genuine; *second*, that he himself has a good title to it; *third*, that he is legally competent to bind himself by indorsement; *fourth*, that the

maker of the paper is competent to bind himself to the payment of the bill, and will pay it on presentment at maturity; *fifth*, that if it is not paid by the maker or acceptor when duly presented at maturity, the indorser, if duly notified of the dishonor, will pay the same to the indorsee, or to any subsequent holder. But if a note or bill is indorsed by a person under legal age, he cannot be held liable for the payment.

146. Forms of Indorsement.—Mr. Chitty, in his work on "Bills of Exchange," gives *six* different kinds of indorsement, which he names as follows: *Blank, Full, General, Qualified, Conditional, and Restrictive*. The *first three* are very commonly used; the *last three* are seldom used in business. Each has its peculiar advantages and disadvantages.

147. Blank Indorsement.—When the payee indorses a note, or other negotiable paper by simply writing his name across the back of it, it is called a Blank Indorsement. When a blank indorsement is made, the name should be written far enough below the end of the bill to leave a blank space above it large enough for the insertion of the name of the indorsee. The fact of its having been so written is probably what gave it its name.

So long as this indorsement continues blank, the note, or bill, can be transferred by mere delivery, the same as if it were payable to *bearer*. The disadvantages of a blank indorsement are, that, if the paper should be stolen, or lost, or fraudulently negotiated by an agent, and get into the hands of an innocent holder for value, the holder of it would be entitled to recover the amount due upon it, in opposition to the claims of the person who was the owner when it was lost.

But the holder of paper, which has been indorsed in blank, may protect himself from such danger of loss by filling up the blank above the indorser's name, and making it payable to himself or order. The holder is at liberty to write anything above the indorser's name which shall protect his own interest without interfering in any way with the liability of the indorser. When a note is indorsed on the back, it is customary to turn the *left* end uppermost. The reason of this is, that it is

natural for right-handed persons to do so, and it, therefore, looks awkward in the opposite position.

148. Full Indorsement.—When the holder writes upon the back of a note, or bill, the name of the person to whom it is to be paid, above his own, and makes it payable to his order, it is called a *full* indorsement. This indorsement prevents its being again negotiated, unless it is indorsed by the first indorsee. It is, perhaps, the most common and the most satisfactory of all the indorsements. If stolen, or lost, or misappropriated, it cannot be negotiated, unless the bill is again indorsed by the rightful holder. Indorsements should always be made on the *back* of a note or bill, because it is the custom of business men; but the legal effect would be the same if they were made on the face.

149. Note and Indorsements.—The following forms will illustrate a note, with the blank and full indorsements made on its *back*. This note is turned over with the left end uppermost, and Mr. D. P. Eells, the payee, first writes his name, only, across the back, which is the *blank* indorsement. Then to illustrate the full indorsement, he writes first, "Pay Wm. Case, or order," and signs his name below; as shown on the following page.

150. Individual Negotiable Note.

FORM No. 28.

	\$3000 ⁰⁰ .	Cleveland, O., May 1, 1882.
	Four Months after date I promise to pay to	
	the order of D. P. Eells.....	
	Three Thousand.....	DOLLARS
	at Third National Bank New-York City.	
Value received.		
No. 125.		W. W. Baynton.

151. FORM No. 29.*Blank Indorsement.*
152. FORM No. 30.*Full Indorsement.*

153. A General Indorsement.—This is one in which the name of the indorsee is mentioned, but neither the word *order* nor *bearer* is used in connection therewith.

It is held that where a note or bill was originally made payable to the payee or order, the omission of *order* or *bearer* in the indorsement does not restrain its negotiability, and therefore a *general* indorsement is in effect precisely the same as a *full* indorsement, and the indorsee has a right to insert the words “or order.”

154. Qualified Indorsement.—An indorsement may be so qualified that it will relieve the indorser from all liability to pay, while at the same time it transfers the title perfectly to the indorsee, and gives him and the subsequent holders all the rights against other parties which would be secured by a *full* indorsement. This is generally done by inserting the words “*without recourse*” in the indorsement, and it is frequently called an “*indorsement without recourse*.” Any other words might be used which would show the intent of the indorser to only transfer his interest, and not to subject himself to any liability. The following forms will illustrate a draft with the general and qualified indorsements following it made on the *back*.

FORM No. 31.

155. Negotiable Draft.

	\$1200 ⁰⁰ .	Buffalo, N. Y., June 10, 1882.
	Ten Days after Sight pay to the order of	
	S. S. Jewett.	
	Twelve Hundred	DOLLARS
	at City Bank, and charge to account of	
To B. Appleton & Co.,		George Goodman.
No. 753. New-York. }		

156. FORM No. 32.*General Indorsement.*

Pay C. S.
Spaulding.
S. S. Jewett.

157. FORM No. 33.*Qualified Indorsement.*

Pay C. S.
Spaulding, or
order, without
recourse.
S. S. Jewett.

158. Conditional Indorsement.—A conditional indorsement may be upon a condition precedent or a condition subsequent. If it be upon a condition precedent that shall give it validity, if the event happens, the title is absolute. If a condition subsequent is to make it void, then upon the occurrence of

the event the title is void. Neither the original character of the note nor its negotiability is affected by a conditional indorsement. It only affects the title of the indorsee.

159. Restrictive Indorsement.—A restrictive indorsement is intended to confine the payment to some particular person, so that he cannot transfer it if he would.

The mere omission of the word order or bearer does not restrict its negotiability. It should be remembered that the omission of "order," or "bearer," in an indorsement, on the back of a note, or draft, does not have the same effect as the omission of the same words in the face of the note or draft. If omitted in the face the bill cannot be negotiated; but the omission in the indorsement still leaves it negotiable, provided the bill in the first instance were written in such a manner as to make it transferable, but if not so made, no indorsement will make it so. It must contain some word or words which clearly indicates the intention to restrict. Each of these indorsements is supposed to be made upon the back of the same draft, to illustrate different methods of transferring it. It would be well to write up paper and make the indorsements. The following forms will illustrate a bank draft with the *conditional* and *restrictive* indorsements on the *back*:

160. Form No. 34. (Bank Draft.)

	FIRST NATIONAL BANK OF DETROIT.	
	No. 66.	Detroit, Mich., May 1, 1882.
	The Fourth National Bank OF NEW-YORK.	
	Pay to the order of <i>George Davis</i>	
	<i>Eighty-two & $\frac{20}{100}$</i>	DOLLARS
	<i>Wm. Bronson.</i> Cashier.	

82 $\frac{20}{100}$.

161. FORM NO. 35.*Conditional Indorsement.*

*Pay to Henry
Martin, or or-
der, unless I
give you notice
not to pay be-
fore maturity.
George Davis.*

162. FORM NO. 36.*Restrictive Indorsement.*

*Pay to Henry
Martin only.
George Davis.*

163. Indorsement Before Maturity.—Negotiable paper is transferable by indorsement any time either before or after maturity up to the time of payment. But, as has already been explained, it makes a material difference to the holder whether he receives it before or after maturity. If he receive it for a valuable consideration before maturity, he takes it free from all equities between the original parties of which he has no knowledge. He takes the bill upon its credit, and is under no obligation to inquire into equities and defenses, and so if he receive a bill that was stolen or lost, or fraudulently obtained, his title is good. It is not subject to any set-off which might have existed if it had remained in the hands of the original payee until maturity.

164. Indorsement After Maturity.—If, as explained under *transfer*, the paper is not indorsed by the original payee until after maturity, then the whole thing is changed, and the indorsee takes it subject to all the objections that would have existed against it in the hands of the payee. The mere fact of its remaining unpaid after maturity in the hands of the original holder is presumptive evidence of something wrong.

He will, however, be entitled to the same rights as was the indorser from whom he received it. If it were issued as accommodation paper, the indorsement after maturity will not remove the objection of want of consideration. But if it had first been negotiated *before* maturity, then it might have been indorsed after maturity, and each indorsee would be equally protected with the first. If, however, a person take a note or bill, even *before due*, under suspicious circumstances, relating to equities, it will be subject to those equities.

165. Indorsement Revocable.—The mere indorsement of a bill does not transfer the title. It must also be delivered to the indorsee, or his agent, before the title passes to him. An indorsement may therefore be withdrawn or revoked any time before delivery.

166. Indorsements Admissible.—We have already seen that when a bill is payable to the *order* of the payee it cannot be negotiated without an indorsement. But when a bill is payable to bearer it may be transferred by delivery alone. It is admissible, however, to indorse a note or bill which is payable to *bearer*, or which is indorsed in *blank*, and in case such bill is indorsed, the indorser becomes liable for the payment, provided it is not paid at maturity. The same bill may be indorsed any number of times unless it contains a *restrictive* indorsement. A bill which has been indorsed by a person, may, in the course of business, come back to him again by indorsement, in which case he will acquire the same rights he had in the bill before.

If the first indorsement remains blank, subsequent indorsements will not affect it, and any holder has a right to fill up the blank indorsement and make it payable to his own order, and pass over all the subsequent indorsements.

167. Necessity of Protesting.—Every indorser whose name appears on the back of a note or bill is liable to the holder for payment, if it is dishonored; provided it is duly protested, and proper notice given to each of them. If the holder neglects to have it protested, all the indorsers will be discharged. And it is as essential that a bill be protested for

non-acceptance as it is for non-payment. Each indorser is liable to every subsequent indorsee, and may look to every antecedent indorser for indemnity. But the security of the holder depends entirely upon having the protest made *immediately* upon the dishonor. An important distinction is made, however, between *foreign* and *inland* bills. The English law requires that *foreign* bills shall be protested for non-acceptance, while *inland* bills need not be, and this law will generally prevail unless there is some statute law which interferes with it. But it is customary to have all bills protested when dishonored, and it is obviously the safer way.

168. Written or Verbal Notice.—As soon as a note or bill is protested notice must be sent to all the parties whom the holder intends to look to for payment. He may select one or more whom he considers responsible, and notify him only, or he may notify all. Each indorser should, in like manner, upon receiving notice from the holder, notify those to whom he intends to look for indemnity, and each has until the next day, after receiving notice, to send. If, however, the indorser knows that the holder sent notice to all the parties to whom he would be entitled to look for indemnity, he may avail himself of such notice, and need not himself notify. It is optional with the person who sends the notice whether it be written or verbal.

169. Kind of Notice.—The notice must be sent by the holder, or by an agent of his—a notary public would be his agent—and not by a stranger, who has no interest in the matter.

No particular form of notice is necessary; it is a sufficient notice to say that the bill, or note, has been *dishonored*. The notice should describe the paper accurately enough so that there can be no mistake about it. It should also state that the person addressed will be looked to for payment. A person, who is not the holder at the time, may give notice if he expects the paper to come into his possession, as where he has given it as collateral security for a loan. As soon as the proper notice is given to the parties who were conditionally liable, they become absolutely liable. When notice is sent by mail, it must be put in the post-office as soon as the day following the protest, and, in case there

is delay in delivering, the sender should be able to prove that it was deposited in the office in time.

170. Liable Without Notice.—When the drawer of a bill unites with an indorser in deceiving a holder, by representing that the bill will be accepted when they know it will not be, they are not entitled to any notice. And when an indorser transfers a bill upon which he knows there is nothing due, he need not be notified. When a person draws a check knowing that he has no money in bank to meet it, and does not expect to deposit any in time to meet it, he is liable without notice. And when a person has made an agreement to waive notice, it is not necessary.

171. Days of Grace.—The days of grace constitute an important consideration in the computation of time in negotiable paper. They were at first allowed as an indulgence to the maker of the note, or acceptor of the bill, to enable him to get together the necessary money for payment. In time it became an established custom with merchants to allow a certain number of days for this purpose, and eventually the custom became law. Days of grace are not uniform in number in different countries. The rule of law is that they are governed by the law of the place where the paper is payable. In this country the days of grace are *three*, which are added to the time at which the paper would otherwise become due. If a note, for instance, without allowing “days of grace,” should become due on the *first* of June, it would not be payable in consequence of days of grace until the *fourth* day of June. If the third day of grace should chance to fall upon Sunday, then the paper is due one day *earlier*, and would be payable on Saturday. And, if it should so happen that this Saturday should be a legal holiday, as Christmas or the Fourth of July, then the paper would be due and payable still one day earlier, or on the *first* day of grace, which, in that case, would be Friday. The statute of New-York makes Monday a legal holiday when such holiday falls on Sunday. These three days are to be counted consecutively; that is, if the *first* day of grace comes on Saturday, the *third* will come on Monday, no allowance being made for Sunday. Days of grace are added in

all cases where negotiable paper has any time to run. They are also allowable in *some* States where paper is payable at sight, but in other States they are not allowed on sight paper. They are not allowed on paper payable at sight in the State of New-York, nor on time drafts drawn upon banks and banking associations. In Canada days of grace are allowed on paper payable at *sight*, but not on paper payable on *demand*. And if the last day of grace fall on Sunday, or a legal holiday, the paper is payable the day *after* instead of the *preceding* day.

Days of grace have been abolished altogether in California. They are not allowed in Kentucky, Georgia, and Alabama on promissory notes, unless they are payable at a bank, or are discounted or left for collection at a bank or private banker's. Thus it becomes necessary for one doing business with a person living in another State, to ascertain what the statute laws are in such State in regard to any contract which he may make.

179. Maturity of Negotiable Paper.—By maturity is meant the day upon which it falls due, and upon which demand of payment should be made. This depends upon the method of computing time, and the consideration of days of grace. The day upon which a note is made or a draft is accepted, is excluded, and the time counted *from* that day. If, for example, a note is dated on the *first* day of any month, and is made payable one month after date, it would fall due on the *first* day of the following month, without days of grace, instead of the last day of the month in which it was given; but with the days of grace it does not fall due until the *fourth* day of the following month. The days of grace are considered a part of the original time, and when a note is made payable one *month* after date it means a month and three days. So, when the time expressed is thirty days, it means thirty-three. It must be remembered also that *thirty days* and a *month* are not equivalent terms. In the computation of time in negotiable paper a *month* means a *calendar* month and not a *lunar* month. So when a note is dated on the *last* day of any month, and is made payable one month after date, it will be due on the last day of the next month if there are no days of grace, even if the next month does not contain as many days as the month in which the note is dated. To

illustrate: suppose four notes are given in the month of January—except a leap year—each note made payable *one month* after date—the *first* being dated 28th; *second*, 29th; *third*, 30th; and *fourth*, on the 31st of January—each of these four notes will fall due on the *third* day of March.

173. Presentation for Payment.—This is one of the most important duties of the holder. The note or bill should be presented on the *exact* day of maturity, and demand made for payment. If the holder neglects to demand payment on the *very day it falls due*, he will lose his right of recovery against all the parties to the paper who are *conditionally* liable, and can only look to those who were *absolutely* liable. The maker of the note, or the acceptor of the draft, will still be liable after such neglect, but the indorsers and the drawer will be discharged. It is of no account to present the paper for payment any day *before* maturity, or any day *after*, so far as the indorsers are concerned; they are absolutely free from liability, unless it is presented on the *exact* day of maturity. The law enforces promptness, fidelity and *exactness* in the presentation and demand of payment of negotiable paper. *Negligence is never tolerated.*

174. Place of Presentment.—When paper is made payable at a bank, or at any other particular place, it must be presented at that place. When payable at a bank, it is a sufficient presentation to leave it with the bank, so that it will be ready for payment and delivery; no formal demand is necessary in such case. If it is made payable generally, that is, without specifying any particular place, then it is necessary to present it either at the place of business or residence of the maker or acceptor. If the maker or acceptor has changed his residence, diligent inquiry should be made, and if his present residence can be ascertained, presentment should be made there. If he has absconded, no demand is necessary. Where after diligent inquiry the residence cannot be ascertained, presentment should be made at his former residence, as arrangements may have been made for paying it there.

175. Protest for Non-Payment.—If a note or draft, when properly presented for payment, is dishonored, it should be immediately *protested*, and notice should be sent in due time to all the indorsers, and to the drawer, if a draft. The following note, made in Chicago, and payable at Phoenix National Bank, Hartford, Conn., had been transferred by indorsement, as appears on the *back*. It was protested for non-payment, as illustrated on the following page.

176. FORM No. 37. (Negotiable Note.)

	\$200 ⁰⁰ .	Chicago, Ill., Oct. 1st, 1881.
	On the fourth day of October, A. D. 1882, without	
	grace for value received I promise to pay to the order	
	of James Backwood.....	
	Two Thousand.....	DOLLARS
at Phoenix National Bank, Hartford, Conn.		
No. 702.	J. W. Bennett.	

177. FORM No. 38.

Pay to Henry Wells,
or order.
James Backwood.
Pay E. F. Dunn.
Henry Wells.
Pay to the order of
John Cook.
E. F. Dunn.
John Cook.

178. FORM No. 39.

United States of America.

STATE OF CONNECTICUT, } ss.
CITY AND COUNTY OF HARTFORD, }

Be it Known, That on the 4th day of October, in the year of our Lord one thousand eight hundred and eighty-two, at the request of E. M. Bunce, Cashier, of Wm. Very, a Notary Public, duly commissioned and sworn, residing in the City of Hartford, aforesaid, did present the original note hereunto annexed to Phoenix National Bank, and demanded payment thereof, which was refused.

Whereupon, I, the said Notary, at the request aforesaid, did protest, and do hereby publicly and solemnly protest, against the Maker and endorsers of the said note, and all others concerned, for all exchange, re-exchange, all costs, damages, and interest, incurred or to be incurred for want of payment of the same.

And I, the said Notary, do hereby certify, that on the same day I deposited in the Post-office at Hartford, Conn., prepaid Notices of Protest of said note, addressed as follows, viz.: James Backwood, Detroit, Mich.; Henry Wells, Cleveland, O.; E. F. Dunn, Rochester, N. Y.; John Cook, New Haven, Conn.; F. W. Bennett, Chicago, Ill.

Thus Done and Protested, in the City of Hartford, aforesaid, and my Notarial Seal affixed, the day and year above written.

FEEES.	
Noting Protest, -	\$0.25
Entering, - - -	.50
Recording, - - -	.25
Affixing Seal, - - -	.25
Notices, - - - -	1.00
Travel, - - - -	.50
Postage, - - - -	.25
	\$3.00

Wm. Very,
Notary Public.

179. Accommodation Drafts.—Both notes and drafts are used as accommodation paper. For instance, A. wants to borrow money of B., and B. is willing to accommodate him, but has no money on hand, B., therefore, draws a draft on H., who is owing him, and makes it payable to A., who gives no value for it. This draft in the hands of A. is accommodation paper, and he cannot use the implied contract against B.; but if he transfers it for money to a bank, or an individual, it then becomes business paper in the hands of the holder, and its payment may be enforced.

180. Forged Paper.—When paper is transferred before maturity, the endorsee generally obtains a perfect title, but if the name of the payee, or the first indorser is forged, the holder has no title. So in a note, if the signature of the maker is forged, the holder can have no right against him. In States which have a statute prohibiting usury, by forfeiture of contract, the holder of such paper can neither transfer nor enforce any right. Negotiable paper is void, either when the consideration is contrary to the general principles of common law or is prohibited by statute.

181. Want of Consideration.—This is one of the common defenses interposed to the payment of negotiable paper. Want of consideration is a good defense between the original parties to the paper. To prove that it is accommodation paper is a sufficient defense as to the original parties, but, after it has been transferred to an innocent holder for value, before maturity, it is no defense.

182. Stolen or Lost Paper.—If negotiable paper, which was originally payable to bearer, or is indorsed in blank, is stolen or lost, it cannot be collected by the thief or finder, but, if it is transferred, the holder who receives it for value before maturity in good faith, can hold it against the claims of the owner at the time it was lost. The loser may protect his interest in a measure by giving notice of the loss to the maker, or acceptor, and indorsers, and advertising it in the newspapers. A lost note cannot be collected without giving indemnity.

183. Rights Before Maturity.—The holder of paper has sometimes the right to demand payment before maturity. When a draft has been protested for non-acceptance, and the proper notices have been served, the holder may proceed at once against the indorsers and the drawer.

184. Laws of the State.—Inasmuch as the different States have different laws in regard to the same thing, it is important to know whether a contract is to be governed by the laws of the State where it is made, or where it is to be performed. If a note or draft is to be performed—that is paid—in the State where it is made, then, of course, it will be governed by the laws of that State. But when a note or draft, or any other negotiable paper is to be paid in another State than that in which it is made, it will be governed by the laws of the State where it is payable. For instance, a note made payable “with interest” in a State where the legal interest is *eight* per cent., but made payable in New-York, where the legal interest is only *six* per cent., will be governed by the laws of New-York. It is a rule in law that a contract which is not valid in the State where it is made, is not valid in any other State; but one which is valid in the State where made is valid in any other. If a note be void in the State where made by reason of the usury law, it has been held that it cannot be enforced in a State where, if it had there been made, it would be good. Marriage contracts, if valid where they are made, are valid everywhere. If a contract is made which relates to personal property, it is governed by the law of the place where made. But, if it is in relation to real estate, it is governed by the law of the place where the land is situated.

185. Collateral Security.—It is frequently the case that negotiable paper is pledged as security for the payment of a loan or debt. If, while this paper is held as collateral security by a bank, the paper should become due, and the bank should fail to demand payment, and have it properly protested in case it is dishonored, the bank will be liable to the owner for the amount of the paper.

186. In Payment of Debt.—A question of much importance frequently arises when paper is transferred by a debtor to a creditor to be applied on account, as to whether it is to be considered as payment of so much of the account, or as only a means of securing payment. It is generally held that the mere transfer of the paper does not operate to extinguish the debt, but it suspends any action for the collection of the debt until the paper falls due. The creditor takes upon himself the responsibility of presenting the paper for payment at maturity, and taking all the requisite steps for fixing the liability of the parties by properly protesting and sending notices. In a few States the Statute provides that the transfer shall be taken as *prima facie* evidence of payment.

In the State of New-York, when paper is transferred on account of debt, it is held that it does *not* operate as payment unless by agreement between the parties to that effect. But where it is transferred at the time the debt is contracted, it is presumed to be taken in payment.

When paper is transferred on account of debt a receipt is often given for the paper, and it will depend much upon the wording of the receipt whether it will operate as payment or not. To illustrate, the *two* following receipts are given: By the *first*, Form No. 40, the transfer would operate as payment; by the *second*, Form No. 41, it would *not*, except in States having a statute making it payment:

187. FORM NO. 40.

(Receipt.)

	<i>Buffalo, N. Y., July 1st, 1882.</i>
	<i>Received of Julius Walker, Samuel Braun's</i>
	<i>note of</i> _____
	<i>Five Hundred</i> _____ <i>DOLLARS</i>
	<i>in payment of said Walker's account.</i>
<i>\$500⁰⁰.</i>	<i>D. V. Brooks.</i>

188. FORM No. 41.

(Receipt.)

	<i>Buffalo, N. Y., July 1, 1882.</i>
	<i>Received of Julius Walker, on account,</i>
	<i>Samuel Brown's note of _____</i>
	<i>Five Hundred _____ DOLLARS</i>
	<i>\$500⁰⁰. D. V. Brooks.</i>

189. Bank Notes.—All bank notes are negotiable paper, and differ from other negotiable paper principally in being always payable to *bearer*. These notes are called money, and are accepted as money, because they are authorized by legislation, and secured by Government bonds. They are always transferable by delivery.

190. Bank of North America.—This was the first bank organized in the United States, and was established in Philadelphia, in 1781, under the auspices of Mr. Morris, Superintendent of Finance, and a delegate to the Continental Congress. At that time the finances and credit, both of the States and of the Continental Congress, were almost entirely exhausted, and, in order to procure supplies for the support of the army, Congress, and several of the State governments, had been obliged to have recourse to the issuing of bills of credit, which was the principal circulating medium.

191. Continental Money.—In 1775, soon after the battle of Lexington, Congress made provision to issue Continental paper to circulate as money, and put in circulation two million dollars, which was increased from month to month until it reached two hundred and fifty millions. This money constantly decreased in value until eventually it became entirely worthless, although the laws at that time made it a legal tender for private debts.

192. State Banks.—Until the National banks were established the currency of the country was all issued by the State banks. These banks were regulated by laws passed by the legislatures of the several States, and in many States the security for the redemption of the bills was so unsatisfactory and uncertain, that they could not be passed outside of the State in which they were issued except at a large discount. The Legislature of the State of New-York passed a general banking law, in 1838, requiring each bank issuing currency to file with the proper officer of the State securities equal in amount to the notes issued. These securities were to consist of bonds of the States, or mortgages on real estate situated within the State, worth, at least, double the amount for which they were mortgaged. But these mortgages could not exceed one-half of the whole amount of securities required. The banking system of New-York was considered as sound as any then in existence.

193. National Banks.—The "National Currency Bank Bill" was passed by Congress, and approved by President Lincoln, February 25, 1863. The first National Bank currency was issued about January, 1864. By the "National Currency Act" the Government guarantees the currency, and requires it to be secured by gold-bearing bonds of the United States, which must be deposited with the Treasurer of the United States. In order to make the redemption of the National Bank notes perfectly secure, each bank is obliged to deposit one hundred dollars in bonds for every ninety dollars of its own notes issued, and each bank is required to redeem its own notes in lawful money on demand. The law makes them a legal tender for all taxes and other dues to the Government, except customs, and for all salaries and other dues owing by the Government within the United States, except the principal and interest of the funded debt. It also makes them receivable by each national bank for all ordinary debts due them. Each bank, designated as a depository, is also required to receive any national bank bills on deposit from all public officers.

The effect of these provisions is to make the notes of these banks a truly national currency perfectly good all over the United States. National bank bills, however, are not legal ten-

der as between individuals, for individual indebtedness, and need not be accepted for such debts, but, if accepted, the effect of the acceptance is to make the payment legal. They are so perfectly secured that they are almost universally accepted in the payment of all claims. The following forms will illustrate the wording of a national bank bill on its face and back:

194. FORM NO. 42. (Face of Bill.)

	NATIONAL CURRENCY.
	<i>This note is secured by bonds of</i>
	THE UNITED STATES,
	<i>Deposited with the Treasurer at Washington.</i>
	THE FIFTH NATIONAL BANK, OF THE CITY OF NEW-YORK,
	<i>will pay the bearer on demand</i>
506.	FIVE DOLLARS.
	<i>H. Hunt, Cashier.</i> <i>R. Kelly, President.</i>

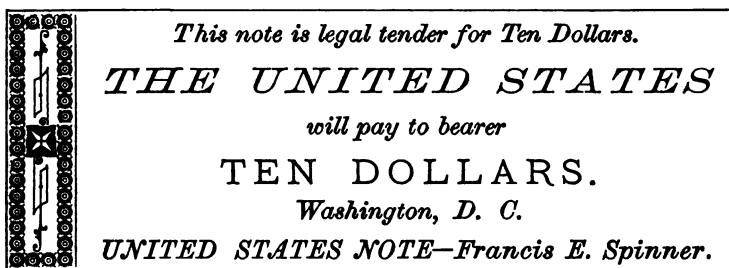
195. FORM NO. 43. (Back of Bill.)

This note is receivable at par in all parts of the United States in payment of all taxes and excise and all other dues of the United States, except duties on imports, and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on public debt.

196. Legal Tender Notes.—The coinage of money and the regulation of its value is under the control of the government of the country where it is used. Congress has power to regulate the value and uses of money, and to determine what

kinds of money shall be used as *legal tender*. By legal tender is meant that kind of money which may be required by law, and which may be offered by law by the debtor as payment of a debt. Gold or silver coin—except trade dollars—is a legal tender, so, also, are United States Treasury Notes within the United States. These notes are known as, and commonly called, “*greenbacks*.” The first legal tender notes were issued bearing date March 10, 1862. The following forms give the *wording* on the face and back:

197. FORM No. 44. (Face of Treasury Note.)



198. FORM No. 45. (Back of Treasury Note.)

This note is a legal tender at its face value for all debts public and private, except duties on imports and interest on the public debt. Counterfeiting or altering this note, or passing any counterfeit or alteration of it, or having in possession any false or counterfeit plate or impression of it, or any paper made in imitation of the paper on which it is printed, is felony, and is punishable by \$5000 fine, or fifteen years' imprisonment at hard labor, or both

199. Letter of Credit.—A letter of credit is a commercial instrument of great convenience, and is very generally used by persons who go to foreign countries, either on business or for pleasure. It enables a person to draw funds, as may be necessary, from banks or bankers in foreign countries where he may be, instead of carrying large amounts of money about his person. He thus avoids the risk of losing his money, and the

inconvenience of making frequent exchanges when traveling, as he is paid in the currency of the country where he presents his letter of credit. The following form will illustrate a common *letter of credit*. The *banks* of the foreign countries, with their *location*, are generally named on the *third* page of the letter, and the payments are entered on the *second* page:

200. FORM NO. 46.

THE CITY BANK.

Foreign Letter of Credit,

No. 1305.

Buffalo, July 11th, 1882.

Gentlemen:

We request that you will have the goodness to furnish Mr. *Bascae Costello*, of this City, whose signature is at foot, with any funds he may require to the extent of

EIGHTEEN THOUSAND FRANKS IN GOLD

against his *Duplicate Receipts* (one of which you will forward to us) for any payment made under this credit.

Whatever sum Mr. *Costello*..... may take up, you will please endorse on the back of this letter, which is to continue in force until July 1st, 1883, and charge to the account of

Your obedient servants,

The City Bank,

The Signature of

*Bascae Costello.**Belmont Cox,*

President.

To Messieurs:

The Bankers mentioned on the third page of this Letter of Credit.

201. Inland Letter of Credit.—There are both *foreign* and *inland* letters of credit. The foregoing letter is for use in foreign countries; the two following forms constitute a set of *inland* letters, the first (No. 47) of which is delivered to the party for whom it is drawn, and the second (No. 48) is sent by the bank which issues them to the bank where the letter is to be presented, and from which the holder intends to draw money. These forms differ somewhat from the foreign letters in wording, but in their general characteristics they are the same. The blanks are given just as they were printed for the use of the bank, and may be copied and filled up by any who would like practice in these forms. The three letters will convey a clear idea of the whole matter.

FORM No. 47.

202. Inland Letter of Credit.

BANK OF COMMERCE IN BUFFALO.

*Buffalo,*_____1882.

To_____

My dear Sir:

I beg to introduce to your courteous attention

*Mr.*_____ *of*_____

*and to request that you will open in*_____ *favor a credit for*

_____ *drafts against which*

*This letter of credit to remain in force*_____ *months from date. You will please note the signature of the bearer which has been forwarded to you under separate cover.*

Very respectfully yours,

H. G. Walton, Vice-President.

FORM No. 48.

203. Inland Letter of Credit.**BANK OF COMMERCE IN BUFFALO.**

Buffalo, _____ 1882.

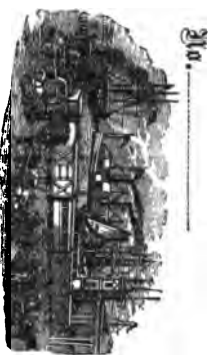
To _____
_____*My dear Sir:*

*I beg to advise having this day issued our Letter-
of-Credit addressed to you for _____
in favor of Mr. _____ of _____
drafts against which _____*

*and to request due honor thereof within the period of _____
months from date. You will please find the signature of the
bearer in the margin hereof.*

*Very respectfully yours,**Signature.**H. G. Maltan,**Vice-President.*

204. Bill of Lading as Security.—Shipping merchants frequently purchase cargoes of grain on speculation to be forwarded to an agent in some city for sale; and then, to obtain the money to pay for it, a draft is drawn upon the consignee and made payable to some bank from which the money is obtained by giving as security for the discount of the draft a Bill of Lading made out by the captain of the vessel, or canal-boat, upon which it is shipped, either in the shipper's name, and then assigned by him to the bank, or made originally in the name of the bank; both forms are used. The bill of lading is usually attached to the draft, and is held by the bank, and the title in the grain passes at once to the bank.



No. _____

FORM No. 49.

205. Bill of Lading.

Buffalo, June 27, 1882.

Shipped By *J. Boutwell*, as Agent, in apparent
good order on board the Canal Boat *John Johnson*
of *Buffalo* whereof *Henry James*

is Master, the following described property, to be transported to the place of destination without unnecessary delay, and to be delivered as addressed on the margin in like good order, in the customary manner, free of lighterage, upon payment of freight and charges as prescribed in this bill.

The Freight, Charges and Demurrage payable to *William Howe, Cashier*
or order, at place of destination, who is the only party authorized to collect the same, and whose receipt shall be in full of all demands on this cargo or bill of lading.

~~In Witness Whereof~~, the said Master of said boat hath affirmed to three Bills of Lading, one marked "original," and two "duplicate," of this tenor and date, one of which being accomplished, the others to stand void.

Order of *City Bank*,1000 Bushels *No. 2, Red Wheat*.Notify *Andrew Johnson & Co., New-York*.

Freight, 5 cents per Bushel.

*John Doe,**Henry James.*

206. Ownership.—The grain is then subject to the direction and control of the bank, and, when sold, the proceeds must be appropriated to the payment of the draft.

The following draft and preceding bill of lading represent such a transaction, in which J. Boutwell purchased the wheat and shipped it on board the canal boat John Johnson, whereof Henry James is captain. The wheat is consigned to Andrew Johnson & Co., New-York agents, on account of the City Bank. The bank also requires J. Boutwell to secure insurance on the wheat for the interest of the bank:

207. FORM No. 50.

	\$10,000 ⁰⁰ .	Buffalo, N. Y., June 27, 1882.
	Pay to the order of City Bank.....	
	Ten Thousand.....	DOLLARS
	Value received and charge the same to account of (6000 bus. wheat Bt. J. Johnson).	
	To A. Johnson & Co., No. 730. New-York. } J. Boutwell.	

208. Counterfeit Bank Bills.—A payment of any debt in bank bills which are counterfeit is a nullity. It has no effect whatever upon the debt, even if both parties at the time supposed them to be genuine.

209. Debtor and Creditor.—Any contract by which a certain sum of money becomes due to any person, and is not paid, but remains in action merely, is a contract of *debt*, and the parties to this contract are called *debtor* and *creditor*. In case of a sale of goods, if the price be not paid in ready money, the buyer becomes the *debtor*, and the seller is the *creditor*.

210. Duty of the Debtor.—It is the duty of the debtor to tender payment to the creditor or his authorized agent at the proper time, usually before demand is made, or action is brought

to recover, but when it is a note or bill which is payable on a particular day, then he should tender payment on that day, in the proper manner and the exact amount. A part of the currency of this country consists of bank notes, and they are a good tender if received by the creditor, or, if not objected to, and are received as money and receipted for as money.

211. Duty of the Creditor.—When the debtor pays according to the terms of the agreement, or in accordance with the manner marked out by the creditor, the creditor should give him an acquittance of the debt. And where the debtor and creditor meet and balance up their accounts, by deducting from the debt some demand of the debtor against the creditor, it is equivalent to a payment of so much upon the debt. And where, by agreement between the parties, other property is taken on the debt, it will operate as payment to that extent, but if there be no agreement to take other property, then the tender must be made in *money*. A tender of a *larger* sum of money than is due is legal, provided the change can be made out of the sum offered, but not if it requires the creditor to make change. But if the debt be in the form of negotiable paper, although it is the duty of the debtor to pay it, it will not be safe for the creditor to wait; he must go to the debtor and *demand* payment if he intend to look to the drawer or indorsers.

212. General Depositor.—A general depositor in a bank which becomes insolvent is a general creditor, and is not entitled to any preference over other creditors. The relation between a bank and a depositor is the ordinary relation of debtor and creditor, but there is an additional obligation arising from custom, that the bank shall honor the checks of the depositor. If money is allowed to remain in a bank without any change by deposits or drafts, and there is no interest to be credited upon it, the statute of limitations will bar its recovery when it has run its full time.

213. Oral.—Oral means spoken, in contra-distinction to written, as oral evidence, which is evidence delivered verbally by a witness; that is, delivered by word of mouth.

214. Parol.—This is a term used to distinguish agreements which are made verbally, or in writing, not under seal, which are called parol contracts, from those which are under seal, which bear the name of deeds or specialties. Parol evidence is evidence verbally delivered by a witness.

215. Receipt.—A receipt is a written acknowledgment of payment of money or delivery of chattels. It is executed by the person to whom the payment or delivery is made, and may be used as evidence against him, on the general principle which allows the admission or declaration of a party to be given in evidence against himself. It is often useful as a voucher in the settlement of private accounts. It is *prima facie* evidence, but not absolute. A receipt "in full" of a specified debt is considered of a higher and more conclusive character than a simple receipt. If a receipt embodies a contract it is not open to the explanation permitted in a simple receipt. No one has a right (unless it be made by contract, or by statute, a condition precedent) to demand a receipt as a condition of payment.

216. Seals.—The common definition of a *seal* is an impression on wax, wafer, or some other tenacious substance capable of being impressed, or a plate of metal, with a flat surface, on which something is engraved, and with which an impression is made on wax, or some other substance, on paper or parchment, in order to authenticate them; the impression thus made is called a seal. When a seal is affixed to an instrument, as a deed, mortgage, or protest, it makes it a specialty. In some of the States a scroll is equally effective. The seal of a notary public is taken judicial notice of the world over. What is a sufficient seal is determined by local law.

217. Specialty.—A specialty is a writing sealed and delivered, containing some agreement, or a writing sealed and delivered, which is given as a security for the payment of a debt, in which such debt is particularly specified. If in the body of the writing it is not said that the parties have set their hands and seals, yet if the document be really sealed, it is a specialty, and if it be not sealed it is not a specialty.

LEGAL DECISIONS IN MISCELLANEOUS CASES.

218. Impersonal Payee.—The following check was drawn and presented for payment, which was refused:

“ST. PAUL, MINN., Jan. 22, 1879.

“Messrs. DAWSON & Co., Bankers:—Pay to the order of, on sight, two hundred dollars, in current funds.

“JONES & PECK.”

The court *held* that this is not a check. It must have a name or indicate a payee. Checks made payable to “cash” or order, or to some character, or number, or order, are held to be payable to bearer, by reason of the use of “or order,” which words indicate intention to make it negotiable, and, when an impersonal payee is mentioned, which cannot indorse, it is presumed to be payable to the bearer. In this case there is no impersonal payee mentioned, nor any blank space left for the payee’s name.

219. Promise to Accept Draft.—A non-resident dealer wrote to a broker in Alabama, asking the prices of cotton, and added: “If I see a margin will authorize you to draw for cost.” Upon being advised of cost, he telegraphed: “Will advance cost if you buy strict, good ordinary at sixteen.” *Held* that the two together constituted an unconditional promise to accept, and, under the statute of Alabama, constitute an acceptance.

220. Check Post-Dated.—A. and B., residents of New-York, exchanged their checks with each other, and each agreed with the other to keep his account good at the bank, to meet his check at maturity, both checks being post-dated. It was *held* that because one party failed to keep his account good was no defense for the other when sued by a *bona fide* holder of his check.

221. Procuring Signature by Fraud.—Suit was brought in Indiana against the maker of a note by an indorsee who received it for value before maturity. The defense was: that

said note was so artfully constructed that its terms, when read properly, contained the contract for a patent right and the territory thereof; but affiant believes it contained a promissory note secretly and artfully concealed therein, which note could only be constructed by mutilating, cutting, and trimming, and severing said note out of said contract; that, when said contract was entire, it was executed by this defendant; but after it was so executed, and delivered in such form, it was mutilated, changed, altered, severed, and otherwise trimmed into the note sued upon, all of which mutilation was done without the knowledge, consent, connivance, or instance, and request of this defendant; wherefore, defendant says that such pretended note is not his act and note, and was never executed by him *as such* in manner and form sued upon." *Held*, that the maker is liable, to an innocent indorsee who received it before maturity for value, to the amount of such note.

222. Wrongful Conversion of Note.—A promissory note after maturity was placed in the hands of an agent for collection, and was converted by him to his own use, and was afterwards sold under an execution against him. It was held that the purchaser did not acquire any interest in the note, and could not maintain an action against the maker.

223. Deceased Maker of Note.—If the principal maker of a note dies, the holder is not bound to notify a surety that the note is not paid, before the settlement of the maker's estate, neither is he obliged to prove the note against the estate.

224. Non-Negotiable Note.—Where a note was made payable for a certain sum named, "with _____ per cent. in attorney's commission, if collected by legal process," it was held that such a note is not negotiable.

225. Immaterial Alteration of Note.—A promissory note was made payable "on demand, with interest," and was signed by R. S. D. and P. Q. D. After the note was signed, R. S. D. wrote below the names, without the knowledge or consent of P. Q. D., "Interest on the above note to be nine per

cent. R. S. D." It was held that this was not a material alteration of the note, so far as P. Q. D. was concerned.

226. Accommodation Paper.—If a person makes his note payable to a bank for the accommodation of a friend, to enable such friend to raise money thereon, without restriction or limitation as to its use, he is liable to the bank on its advancing the money and the appropriation to the purpose for which the note was given.

227. Official Signature.—A promissory note was signed by several officers of a church, and after each signature was added the words, "Vestryman, Trinity Church." It was held that it was not a note of the church or corporation, but of the individuals who signed it.

228. Gift of Notes.—A short time before his death C, indorsed each of two notes, of which he was the holder, as follows: "I transfer the within note as a gift to Miss Agnes Morrison;" they were then delivered to his nephew, with direction to take care of them, and give them to Miss Morrison after his death. C. wrote Miss Morrison stating that he had given her the notes. It was *held* that the title to the notes passed to the assignee as soon as they were assigned and delivered to the nephew.

229. Rate of Interest After Maturity.—A note was made payable "one day after date with interest from date at the rate of twelve per cent. per annum, interest to be paid annually." It was held that the note would draw the same rate of interest *after maturity* until paid.

230. Consideration.—The mere fact that a negotiable note is purchased for about one-half of its face value, there being no evidence showing it to be worth more than the amount paid, and the evidence tending to show that the purchaser did not regard the note as easily collectable, it was *held* is not sufficient to put the purchaser on inquiry as to the *consideration* of the note.

231. Conditional Draft.—The following order was drawn upon John H. Erck, and accepted by him. He was not owing

Randall anything when it was drawn, and soon after the acceptance the contract was abandoned by Randall, and nothing ever became due on the contract:

"JOHN H. ECK, Esq.

OMAHA, NEB., Feb. 9, 1877.

"*Sir*,—Please pay George H. Hoagland, or order, six hundred and thirty-five dollars out of amount due me on contract for erection of your store building, when due.

"J. B. RANDALL,
"Contractor."

It was *held* that this order was not absolute, but was to be paid only when the amount was due on the contract.

232. Note at Variance with Statute.—The revised statutes of Indiana provide that "Notes payable to order or bearer in a bank in this State, shall be negotiable as inland bills of exchange, and the payers and indorsers thereof may recover as in case of such bills." The holders of the following promissory note, who had received it before maturity by indorsement, brought an action to recover, but were defeated on the ground that it did not come within the statutes:

"HOPE, IND., March 20, 1877.

"Four months after date we promise to pay James B. Drake or order, four hundred dollars, and five per cent. thereon for attorney's fees, value received, without any relief whatever from valuation or appraisal laws, negotiable and payable at the Indiana Banking Company of Indianapolis, Indiana, with ten per cent. interest until paid.

"HENRY F. ROMINGER,
"MARY E. ROMINGER."

The foregoing note was not made payable at an *office* or *banking-house* of the company, and, therefore, *held* that the *place* was not specified, as the statute requires.

233. Note with Illegal Consideration.—Criminal proceedings were commenced against a man for obtaining goods

under false pretenses, and his wife gave the parties from whom the goods were obtained a note, signed by herself and husband, for the amount of the goods and costs made, and secured the note by mortgage on her real estate, the consideration for which was, that they should procure an abandonment of the prosecution and release of the husband. It was *held* that a court of equity would not enforce such a contract.

234. Diligence in Giving Notice.—Proceedings were commenced against an indorser of a promissory note in Baltimore, where the note was made and dated, and where the indorser lived and continued to reside for some time afterward. His sign was retained at his place of business, and his name was still in the city directory. In the certificate of protest made out by the notary public, he inserted the words, “after diligent search and inquiry to ascertain his whereabouts.”

It was *held* that these words contained in a notarial certificate of protest are not admissible as evidence of such inquiry and diligent search having been made, and that the notary should have treated the indorser as presumably being still a resident of the city.

235. Obtaining Note by Fraud.—Suit was brought in Pennsylvania on a note of five hundred dollars. Evidence was offered to show that the maker of the note went to a bank to receive payment on a certificate of deposit for five hundred dollars, and that, when the money was paid to him, he was requested to sign, and did sign, a paper which was represented by the bank officers to be a receipt for five hundred dollars, but it turned out to be a note for that amount. The court rejected the evidence. The court of appeals *held* that the evidence should have been admitted.

236. Joint and Several Note.—An action was brought on a note containing the words, “*I* promise to pay,” and signed by *two* persons as makers. It was *held* that the note was both *joint* and *several*.

237. Statute of Ohio.—The Statute of Ohio provides that, when a note or other negotiable paper is given, the consideration

for which consists in whole or in part of the right to make, use, or vend, any patent invention, or inventions claimed to be patented, the words, "*given for a patent right*," shall be prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder shall be subject to the same defenses as in the hands of the original owner or holder. Pennsylvania has a similar statute.

238. Indorsement.—A note was written as follows: "I promise to pay to the order of myself," and was signed by two persons, "A. B." and "C. D.," and was then placed by C. D. in the hands of A. B., to be put into circulation by him for his own benefit. This note was indorsed by "A. B." and negotiated before maturity, and the title of the holder was held to be good without the indorsement of "C. D."

239. Where Bills of Exchange are Payable.—An action was brought against the drawers of the following bill:

\$166 $\frac{15}{100}$.

CHARLOTTE, N. C., Oct. 30, 1871.

Thirty days after date pay to the order of Wittkowski & Rintel one hundred and sixty-six and $\frac{15}{100}$ dollars, value received, and charge to account of

GENTRY & SMITH.

To S. L. BILLINGS.

This draft was accepted the same day it was drawn. It was then discounted by a bank, and not being paid at maturity was protested, and notices were sent by mail addressed to the drawers at Gap Civil, in Alleghany County, and to the acceptor at Sparta, in the same county, in N. C. It was from information received from the plaintiff that the notices were so sent. It was proved that Billings lived in Grayson County, Va. *Held* that the presentation at the place of date is a sufficient demand to hold the parties after notice of protest, where no place of payment is stated in the draft, and no proof is made that any particular place was agreed upon.

240. Payment.—Payment is the fulfillment of a promise, or the performance of an agreement. It is the discharge in money of a sum due. When payment is pleaded as a defense, the defendant must prove the payment of money or something accepted in its stead, made to the plaintiff or some person authorized in his behalf to receive it. Payment is doing precisely what the payer agreed to do. That the payment may extinguish the debt, it must be made by a person who has a right to make it, to a person who is entitled to receive it, in something proper to be received, both as to kind and quality, and at the appointed place and time.

241. Evidence of Payment.—Evidence that anything has been done and accepted, as payment is evidence of payment. A receipt is *prima facie* evidence of payment. So is the possession by the debtor of a security after the day of payment, which security is usually given up on payment of the debt. A's note payable to the order of B., indorsed by him and cancelled, or in the hands of A., is *prima facie* evidence of a payment by him to B. of the sum mentioned in the note.

242. Filing of Papers.—There can be nothing of greater importance to a business house than the careful filing and preservation of all papers which may be of any use in the transactions of the business. Many times they are of the utmost importance, and they should be so arranged and placed that they may be found and referred to at once. One has no right to waste his customer's time, or his own, in a fruitless search for papers which were not properly filed.

243. Copying Letters.—Every business letter that is received should be carefully filed and preserved for future reference; and every letter of any importance which is written should be copied before it leaves the office of the writer. Copying presses and other conveniences for copying letters can easily be obtained from nearly any book or stationery seller.

RECAPITULATION.

1. Negotiable paper is that which may be transferred by indorsement and delivery.
2. The words used to make paper negotiable are *order* or *bearer*.
3. A promissory note, is a written promise to pay a certain amount of *money*.
4. The maker of a note is the original debtor, and is liable to any person who becomes the owner.
5. The party to whom paper is payable is the *payee* and he may transfer it to another, and thus become the *indorser*.
6. He who receives paper from the indorser is called the *indorsee*, and he may indorse to another.
7. To get a good title to negotiable paper the holder must have received it in good faith for value.
8. The transfer of paper before maturity may give the party receiving it better rights than the payee had, but it cannot if received after it is due.
9. The general modes of transferring are either by indorsement and delivery, or by delivery alone.
10. There are *six* different kinds of indorsement.
11. The date means the *day*, *month* and *year*,
12. A note or draft may be written on any paper with ink or with pencil and it will be good.
13. The payee should be distinctly named in commercial paper unless it is payable to bearer.
14. A note made on Sunday is void; a note made by a minor is voidable.
15. Notes bear interest only when so stated, except after maturity.
16. When negotiable paper is lost or stolen it does not release the maker; if it gets into the hands of an innocent party he must pay it.
17. Notes obtained by fraud, or made by a person while intoxicated, cannot be collected.
18. Value received need not necessarily be inserted in negotiable paper, but it is desirable for the holder.
19. If no time of payment is mentioned in a note, it is payable on demand.
20. Paper payable to bearer, or indorsed in blank, may be transferred by delivery alone.
21. The time of payment must not depend upon a contingency, it must be based upon a certainty.
22. The maker of accommodation paper is not bound to the party accommodated; but to any other person receiving the paper for value he is.
23. The holder of negotiable paper has a claim against every person whose name appeared on it at the time he received it.

24. A demand note is valid until presented, if presented within a reasonable time.
25. No particular form of words is necessary to constitute negotiable paper, but it must conform to certain requirements.
26. A due bill is an acknowledgment and evidence of debt.
27. A draft is an order upon a person to pay another a certain sum of money.
28. A bill of exchange is a draft, but usually drawn on a bank or a banker. It may be *inland* or *foreign*.
29. The parties to negotiable paper are *original* or *subsequent*: the latter are only conditionally liable.
30. The drawer of a draft, the acceptor for *honor* and all endorsers are only *conditionally* liable.
31. Drafts having time to run from sight must be presented for *acceptance*.
32. When demand is made for an acceptance and is refused, the draft must be protested.
33. An acceptor for *honor* must be notified the same as an indorser.
34. A husband who has acquired a right to negotiable paper which was given to his wife, either before or after marriage, may indorse it.
35. If the payee of a note die, his executor or administrator may indorse it.
36. The maker of a note may make it payable to his own order, and when indorsed it is good in the hands of the indorsee.
37. The finder of negotiable paper does not get any title to it and cannot give any.
38. An indorser can escape liability by using "without recourse."
39. Indorsements should be written across the back, but may be written on the face of a bill or note.
40. When a bill or note is received as security for a debt, and it is dishonored, the debt revives.
41. When two or more persons, who are partners are jointly liable on a note, notice to one is sufficient, but notice to both is better.
42. If a note or bill is lost, it is no excuse for not giving notice of protest.
43. Notice of protest must be sent not later than the day after the bill is protested, and may be sent to all indorsers or to any one who is perfectly responsible.
44. An indorser who receives notice of protest should notify all those who preceded him.
45. Checks should be presented for payment the same day, or the day after they are received, and should be presented during business hours.
46. A check when endorsed by the payee, and returned to the drawer by the bank, is evidence of payment.

47. The holder of a draft must use due diligence to find the drawee or his residence.
48. The indorser of a check has a right to insist that the indorsee present it the same or the next day.
49. The statute of limitation does not run while the debtor is out of the State. After a debt is due the time for suing is limited to six years in New York. The statute does not cancel the debt.
50. Negotiable paper is not due until the third day of grace, unless it comes on Sunday or a holiday.
51. Ignorance of law does not excuse any person.
52. A signature written with a pencil is good at law.
53. A receipt is only *prima facie* evidence, not conclusive. It is written evidence, but not a contract.
54. No contract is good unless there be a consideration. No consideration is good that is illegal.
55. Part payment by the debtor upon a debt which is outlawed revives the balance.
56. An "acceptance" is a promise to pay, and is only applicable to drafts.
57. Sealed instruments run longer than parol ones, under the statute of limitations.
58. A debtor has no right (unless it be made by contract, or by statute, a condition precedent) to demand a receipt as a condition of payment.
59. The sufficiency of a "seal" is determined by the local law of the place. In some States a scrawl answers the purpose, in some an impression of a seal on the paper, but generally on wax or wafer.
60. A contract for the conveyance of land in fee or for life must be under seal.
61. There are several ways of depositing money; savings banks, and most other banks use pocket bank-books. In all a voucher of some kind is given.
62. Usually a firm-name may be signed by any one of the partners.
63. At present (1882) the law requires a *two-cent stamp* upon every check, the fine for omitting which is *fifty dollars*.
64. A *specialty* in law means a written agreement or contract under *seal*, such as a deed, mortgage or protest.
65. A bill of lading is negotiable, and when indorsed as collateral security, it transfers the property to the party to whom it is given as security.
66. A *debtor* should go to the creditor, or party to whom the debt is due, and pay, but in case of negotiable paper with indorsements, it will not be safe for the holder to wait.
67. A *legal tender* is such a tender as the law requires, and the debtor may make in payment of the debt: gold, silver or treasury notes.

SALE OF PERSONAL PROPERTY.

244. Contract of Sale.—The contract of sale of personal property is governed by the same principles of law as other contracts, and any person who can make other legal contracts may make a contract of sale and perfect it by delivery. Barter is supposed to be much older than sale, and consists in the exchange of one commodity for another. It, also, is governed by the same general principles.

245. Sale.—A sale is the transfer of the title in the thing sold from the vendor to the vendee in consideration of a certain money price. We use the word sale here as including only an absolute immediate transfer. Contracts to sell are not sales, and may be conditional. There may be a transfer of title without a sale, and this may occur by operation of law. When goods have been wrongfully converted by another, the owner may, as the lawyers say, *waive the tort*, and sue him for their value as though there had been a sale without payment. The owner may sue, also, for the wrongful conversion, and recover judgment for the value of the goods, in which case, upon payment of the judgment, the title vests in the wrong doer. To constitute a sale the absolute title must be transferred, otherwise it would be a bailment or a mortgage. The elements that are essential to a valid sale are: *First*, the *thing* or *subject-matter* of the sale; *Second*, the *price*; *Third*, the *mutual consent* of parties who have the ability to contract.

246. The Subject-Matter.—The thing which is to be sold must either have an actual or potential existence. It must also be capable of delivery. If goods were sold which were supposed to be in existence at the time of the sale, but which were, in fact, destroyed before the time of the sale, the contract would be void. But the goods need not be in possession to make a valid sale. If they have been consigned to the vendor, and are on the way in the course of conveyance, the sale will

be valid. And it is not necessary that the thing should be in existence at the time of sale, if it is to come into existence as the product of something the vendor now owns, or has an interest in, it will be sufficient. The fruits, or other crops to be grown from a farm, or goods to be manufactured, or the fish to be caught by the casting of a net, are all subjects of sale.

247. A Mere Possibility.—A mere possibility not connected with a present interest in any property which the vendor owns, is a bare contingency which cannot be the subject of a present sale, but may be the basis of an agreement to sell in the future. For instance, a person cannot sell all the corn that he may hereafter buy. He has no present right in any corn, and, therefore, cannot sell any. He may, however, contract to sell goods or specified articles, or all the corn he shall buy in market during a certain time, and to deliver them for certain prices. But such contracts are not in strictness sales, as we before observed, although by lawyers, as well as by men of business, they are spoken of as sales.

248. Legal Subject-Matter.—No sale will be valid unless the subject is legal. If, therefore, the sale of any property is prohibited by statute, a contract for the sale of such property cannot be enforced.

249. The Price.—The price is the consideration which is given by the purchaser, in exchange for the property, and which induces the seller to part with the ownership. Without price there can be no sale; it would be merely a gift. To constitute a sale the price must be in money, or in some representative of money, as bills of exchange, checks, or notes, which are convertible into money. It must also be a definite and certain sum, or susceptible of being ascertained by some means by the terms of, or implied by, the contract. The price need not be fixed by the parties; the contract may provide some way of getting at the price. It may be the market price, or the price some other person paid, or it may be left to some third person to fix a price. But, if anything happens to prevent the price being ascertained, there is no contract. The general rule is, that the parties can

agree upon any price they choose, and mere inadequacy of price does not make the contract void unless it is so grossly inadequate as to afford presumption of fraud.

250. The Consent of the Parties.—Without a mutual consent of both parties to the terms of the contract, as to any other contracts, there can be no sale. If there is any mistake about the identity of the goods or thing sold, or in regard to the price offered or demanded, it will destroy the sale, unless it be where the purchaser supposes the price is larger than the seller agreed to take. Sales may be negotiated by letter, and, if a letter of acceptance of the proposition is dropped into the post before notice of withdrawal is received, the contract is complete. But the vendor has a right to withdraw his proposition any time before it is accepted.

251. The Mode of Making the Contract.—At common law no form of words, no writing, no solemnity is necessary to a sale, nor to a contract for a sale whatever the price or value of the goods may be. The seller and the buyer agree upon the price, the buyer pays the price, and the seller delivers the goods to him, and there is the end of it. It is a fully executed contract of sale. So a binding contract to sell for, and to pay, a certain price, however large, was good at common law, and remains good now, in all cases where the price is not large enough to bring the contract within the statute of frauds.

252. Statute of Frauds Generally.—The British statute of frauds, so called, was passed in the year 1677, and was intended to prevent frauds and perjuries. It requires certain contracts and conveyances to be in writing, or in the case of sale of goods, and for a certain price or more, to be accompanied, if not in writing, by a delivery of the goods, in whole or in part, or by a payment of part of the price; and the agreement in writing, or the proof of the oral agreement, and of the one or other of the acts required by the statute, are the only proofs of the contract of which courts can take notice. This statute has been re-enacted, with modifications, in almost every State of the Union. Its provisions, and the language in which they are

clothed, may vary, but, in substance, it is almost identical, in all of them, in respect of sales, agreements to sell, and agreements to answer for the debt, default, or miscarriage of another person.

253. Application of the Statute to Sales.—It applies only to contracts that are to be performed in the future. Contracts fully executed by payment and delivery, however large or small the price, are not within its scope. As to executory contracts (those to be performed in the future), it is everywhere confined to such as fix not less than a certain price for the goods. The statute of New-York is in these words: “Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless: *First*, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged thereby; or, *second*, unless the buyer shall accept and receive part of such goods, or the evidences, or some of them of such things in action; or, *third*, unless the buyer shall, at the time, pay some part of the purchase money.” It should be borne in mind that this clause applies only to pure contracts for the sale of goods, and so forth, and that, if a contract is for goods to be made, as a contract for boards to be made from certain logs, or a monument to be made of certain pieces of marble, it is not within the statute; such a contract is for labor as well as for the goods when accepted.

254. Further Application of Statute.—The statute of frauds embraces all contracts for property which exists at the time in the same condition as it is to be delivered, where nothing is necessary but to deliver the property and pay the price to complete the contract. And all contracts which are executory, where at the time of the sale the thing exists in the same condition in which it is to be delivered. But it does not embrace executory contracts for the delivery of articles which have to be manufactured or materially changed by work expended upon them before they can be delivered. If a farmer offers to sell a merchant a thousand bushels of wheat, which is threshed and ready for delivery, at one dollar per bushel, and the merchant accepts the offer and promises to call

for it the next day, it is within the statute, and the farmer need not deliver, unless the contract be in writing. So, also, if one promises to make and indorse a note with others to raise money to pay a debt for a third party, it comes within the statute, and is not binding unless the statute be complied with.

255. Application to Contracts not to be Performed within a Year.—The statute requires, as essential to the validity of such a contract, that the contract shall be in writing, signed by the party to be charged, or his agent authorized thereto, or a memorandum, or note, of it, so signed, shall be made. This clause applies to a great variety of contracts as well as to sales. A parol contract, to come within the statute, must be incapable of being performed within a year. Where a contract cannot be performed within the year, a partial performance does not, but a full performance may take it out of the statute. For example: A. agreed, by parol, to serve B. for two years, for \$1,000, and served the whole time; or, having served the whole time, he is discharged. In the first case, he can recover only on the contract, and, of course, only the contract price; in the second case, he cannot recover, proportionally, on the oral contract, because that is void by the statute, and has not been ratified, but he is entitled to the worth of his services rendered.

256. Application to Promises to Answer for the Debt of Another.—The provision of the statute, in this regard, usually is, in substance, that no action shall lie to charge the person with the debt, default, or miscarriage of another person, unless he has agreed in writing to be so chargeable, and the writing be signed by himself or some person duly authorized to sign it for him. The writing may be either a full and formal agreement, or a note, or memorandum, clearly expressing his obligation. The statute applies to all *collateral* promises, but not to *original* promises. One's promise to pay one's *own* debt is an original promise; but a promise to pay the debt of *another* is a collateral promise. Thus it was early decided in an English court that, "if two came to a shop, and one buys, and the other, to gain him credit, promises the seller, 'If he does

not pay you I will," this is a *collateral* promise, and void, unless it is put in writing. But, if he says: "Let him have the goods, I will be your paymaster," this is an undertaking for himself, and he shall be intended to be the very buyer, and the other to act as his servant. It is not always easy to determine whether a promise is *original* or *collateral*. But to whomsoever the credit was given, he is the *original* debtor. The credit is not always given to the party who receives the goods. But the party who did not receive the goods always has the right to prove, if he be able, that the other party was the purchaser, and that his own promise was only collateral, and, consequently, not binding, unless in writing. If, however, a contract can be proven to be an *original* promise, it cannot come within the statute, and need not be in writing to be binding.

257. The Transit of Goods.—When the purchaser lives far from the seller the goods should be sent by such conveyance as the buyer shall indicate or direct. When no directions are given, the seller may send them by the customary manner of sending such goods. If ordinary care is taken in sending the goods the buyer will be responsible for any loss that is sustained in the transit.

The goods are generally at the risk of the seller only until they are delivered to the purchaser, or to a common carrier for conveyance. And when they are delivered to *any* common carrier by direction of the purchaser, the responsibility of the seller terminates. If, when goods are sold they are put up separately in a box or parcel ready for delivery, and the purchaser then requests the seller to hold the goods for him for a time, and the goods are so retained, the seller then becomes the bailee of the purchaser, and any loss which is not caused by neglect of the bailee must be sustained by the purchaser.

258. Continued Possession by Vendor.—The possession of goods is presumptive evidence of ownership, and any person having goods in possession is presumed to have the right to sell them; where, therefore, a person sells goods, but does not deliver them, still keeping them in his own possession, it is an indication that the sale is not genuine, and, if a third person

buy the goods without knowing that they had been sold, and the goods are delivered to him, his title is good. And so, if goods are sold and remain in the possession of the seller a considerable time without any adequate explanation of the neglect of transfer, the transaction will be considered void as far as it concerns a third person who buys innocently, or one who attaches the property to secure the payment of a debt.

259. Entire or Severable Contract.—It makes a material difference in regard to the rights and remedies of the parties, in many cases, whether the contract is an *entire* one or *severable*. If a farmer offer to sell his farm, and his live stock, and his farming implements, and his growing crops, all for one price, as eight thousand dollars, it is an entire contract; and if the title is imperfect to any one of them the purchaser need not take any part. But if the offer be to sell the farm for six thousand dollars, the live stock for one thousand, the farming implements for five hundred, and the growing crops for five hundred dollars, and the offer is accepted, the contract is a severable one, and, if no title to the farm can be given, the seller can insist upon the purchaser taking the other property. A contract which was originally entire may be rendered severable by the parties doing something in connection with it which is inconsistent with its entirety.

260. Conditional Sales.—A sale may be on condition that the vendee pay for the goods within a specified time, and, in the meantime, he may have possession of the goods and have the right to use them until the time expires. But, if he fail to pay at the specified time, the contract is void. Such a purchaser has no right to sell the goods, nor can they be attached to pay his creditors until the sale is completed. So, also, property may be sold with the condition that the purchaser may use it for a certain length of time, and, if it is not adapted to the use he wishes to make of it, he may return it. If in such case the time is limited, and he fails to return it within the time, the sale is binding. And if a man sell goods with the condition that he may buy them back within a specified time, by paying a certain fixed price, and he neglects to buy them within

the time, he loses his right immediately upon the expiration thereof.

261. Disclosure of Certain Facts.—It is important to a business man to know what obligations devolve upon him in regard to disclosing facts in relation to the goods which are to be sold. The law holds him responsible for neglecting to disclose certain facts in relation to the goods. If he were governed by the moral law he would make known to the purchaser *every* defect he had knowledge of. But the common law is not so exacting. Disclosures of defects, which are equally known by both parties, need not be made. Only material facts which are not known to the purchaser, and are not open to his observation, need to be disclosed. Defects which are equally open to both parties need not be disclosed; only such as the seller has knowledge of when the buyer has not. If misrepresentations are made knowingly to induce the vendee to purchase, it will be evidence of fraud, and the vendee may avoid the contract. So, also, if a seller was induced to make a sale by misrepresentations he may annul the contract.

262. Sale of Stolen Goods.—A person may have the *possession* of goods without being the *owner*. But no person can make a valid sale of the goods unless he is the owner, and, if he be the owner, he may sell, although the goods are not in his possession. It follows, therefore, that no person can sell stolen goods so as to give a good title to the purchaser. Even where goods are sold at public auction the purchaser does not get any title if the goods were stolen, and the owner of the goods may take possession of them, if he can find them, notwithstanding they may be in the hands of an innocent purchaser. The law has gone so far as to make an auctioneer pay for goods which had been received and sold by him, without any knowledge of their having been stolen. There is an exception to this rule, however, in the case of money or negotiable paper which is transferable by delivery, either of which, if transferred after it is stolen or found, the holder, who takes it for value without knowledge of any wrong, will have a good title, and can hold it against the original owner.

263. Place of Delivery of Goods.—When there is no agreement as to the particular *place* of delivery, and no general custom regulating it, then the place where the goods are when sold is generally understood to be the place of delivery. But it has been held that, where a sale is to pay a debt, the property should be delivered at the residence of the creditor, or at his place of business.

264. Sale of "Good-Will."—By *good-will* we mean a man's *business*, or the *business* of a firm, as distinguished from the stock in trade or capital. It is the reputation which has been made in and for the business, which, it is presumed, will continue to draw business, and induce old customers to continue doing business with the concern. In manufacturing and commercial business good-will is sometimes of great value. In general the party selling the *good-will* of his establishment binds himself not to again engage in the same business within the limits of the old business, or where it will render the good-will valueless, or seriously injure it. But, as there are many ways of avoiding such an agreement, the purchaser of the good-will should insist upon a contract which shall specify the amount he shall receive as damages if the seller becomes interested in a competing business. Frequently the *good-will* of a business is worth more than the stock in trade would be without it.

265. Delivery to a Third Person.—To be effective, the delivery of goods must be either to the vendee or to some person by him authorized to accept for him. A parol contract for the sale of goods for a price exceeding *fifty dollars* specified a carrier of them; but it was held that the carrier had no authority to accept them for the vendee, and that delivery to him did not satisfy the statute. So, upon the principle that a man cannot serve two masters, it has been held that a broker cannot act for both the seller and the buyer of goods, and deliver for the one and accept for the other, and so take the sale out of the statute.

266. Necessary Delivery.—The statute provides that the contract of sale may be completed by a delivery of part or of

all the goods. It is important to know how small a part may be delivered and yet be sufficient. The delivery, whether of the whole or part, must be with the intention of transferring the right of possession to the whole from the vendor to the vendee.

The vendee must accept with the intention of receiving it as owner. The rule is, that where a part only of the goods is delivered, it must be sufficiently large to lessen the quantity to be delivered. There may also be a symbolical delivery, as where grain is stored in an elevator, and a delivery order on the warehouseman is given to the purchaser and is accepted by the warehouse-keeper, or, where a stock of goods in a store is sold and the key to the store is delivered to the purchaser.

267. Effect of Sale.—A valid sale transfers the ownership in the property from the vendor to the vendee; it, therefore, follows that, if the ownership is not transferred, it is not a sale. The price is also transferred from the vendee to the vendor. But the vendee has no right to demand the transfer of the possession of the goods until he has paid the price, or tendered the full amount to the vendor. But if a credit is given, by fixing a future time at which the price may be paid, the vendee can then demand an immediate delivery of the goods. If no credit is given, the vendor, by delivering or offering to deliver, can demand the immediate payment of the price. And where the owner of goods offers to sell them at a certain price, and the other party accepts the offer, but refuses to pay, the owner may treat the sale as void.

268. The Specific Property.—The sale cannot be completed, nor the property be transferred, until the article contracted for is in the particular condition which the terms of the contract demand. If the contract specify a particular article in existence, or prescribe that the article be made of certain things, it cannot be satisfied by the delivery of a precisely similar thing, or of an article made of similar but not the identical things. A manufacturer's agreement to sell and deliver a set of furniture of a certain description at a future day, does not bind him to deliver any particular set of such furniture, though he have one on hand at the time of the contract.

269. Title to Goods Sold.—The ownership of goods sold does not pass under an executory contract until delivery. If the party who has agreed to sell refuses to deliver the goods, the buyer, whether he has paid the price or not, is not vested with the title to them, and his remedy is simply an action for damages for the breach of the contract.

270. Care of the Goods after Sale.—When the sale is perfected and the title has passed to the buyer, but the seller is yet to transmit the goods to the buyer, or keep them until called for, he is bound to take *ordinary* care of them, such as a man of ordinary prudence takes of his own, and is liable to the owner for any damages sustained through want of such care.

271. Bill of Parcels.—A bill of parcels, commonly called a “bill,” and also called an “invoice,” is a written list, or account, of goods, given by the seller to the buyer, describing the articles purchased, giving the value or price of each article, and extending the figures into an item-column, for convenience in showing the whole amount.

272. FORM No. 51.

Buffalo, July 10, 1882.

Messrs. J. B. Lippincott & Co.,
Philadelphia, Pa.

Bought of MATTHEWS, NORTHRUP & CO.,

PUBLISHERS OF

THE NEW SERIES BOOK-KEEPING.

50	Counting-House Book-Keeping . . .	@ 3.00	150		
100	Commercial Book-Keeping . . .	@ 2.00	200		
200	Common School Book-Keeping . . .	@ 75c.	150		
300	Elementary Book-Keeping . . .	@ 75c.	225		
100	Sets Commercial Blanks . . .	@ 1.25	125		
200	Sets Common School Blanks . . .	@ 75c.	150		
<i>Rec'd Payment,</i>					<i>\$1000</i>

273. Bill of Sale.—A bill of sale is a formal written conveyance of personal property. If the property is delivered when sold, or if part of the purchase money is paid, a written instrument is not necessary to make the conveyance binding, but it is convenient evidence of the transfer of title. But to protect the interest of the purchaser against the creditors of the seller, the bill of sale is not sufficient of itself, there should also be a delivery of the property. If an actual and continued change of possession does not accompany the sale it is void as against the creditors of the seller and subsequent purchasers and mortgages in good faith, unless the buyer can show that his purchase was made in good faith, without intent to defraud, and that there was some good reason for leaving the property in the hands of the seller.

FORM No. 52.

274. Bill of Sale.

Know all Men by these Presents, That (I, or we, here give name of the person or persons of the first part, giving town, county and State where such party resides) _____ of the first part, for and in consideration of the sum of _____ lawful money of the United States, to _____ in hand paid, at or before the ensembling and delivery of these presents, by (here insert name and residence of second party) _____ of the second part, the receipt whereof is hereby acknowledged, ha _____ bargained and sold, and by these presents do grant and convey, unto the said part _____ of the second part, (his or their) executors, administrators and assigns, (here give a full and accurate description of the property sold.) _____

To Have and to Hold the same unto the said part _____ of the second part, _____ executors, administrators and assigns forever. And _____ do for _____ heirs, executors and administrators, covenant and agree, to and with the said part _____ of the second part, to warrant and defend the sale of the said property _____ hereby sold unto the said part _____ of the second part, _____ executors, administrators and assigns, against all and every person and persons whomsoever.

In Witness Whereof, _____ have hereunto
set _____ hand and seal the _____ day of
_____ in the year one thousand eight hundred
and _____

SEALED AND DELIVERED }
IN THE PRESENCE OF }

Signature.

STATE OF NEW-YORK,

_____ } ss.
COUNTY OF _____

On this _____ day of _____ in the
year one thousand eight hundred and _____ before me, the
subscriber, personally came _____
to me known to be the person described in and who executed the
within instrument, and _____ acknowledged
that he executed the same.

FORM No. 53.

275. Bill of Sale of a Horse, with Warranty.

Know all Men, by these presents, that I, (D. F.) of the
City of Cleveland, County of Cuyahoga, and State of Ohio,
live stock broker, of the first part, in consideration of one hundred
dollars in money, and a note of one hundred and fifty dollars
received from (R. S.) lawyer, party of the second part, the receipt
whereof I hereby acknowledge, have bargained, sold, granted,
and conveyed, and by these presents do bargain, sell, grant and
convey unto the said party of the second part, his executors,
administrators and assigns, one black horse, six years old, with
white right fore foot, known as Barney; to have and to hold the
same unto the said party of the second part, his executors, admin-
istrators and assigns forever. And I do hereby warrant the said
horse to be sound in every respect, and to be free from any tricks,
and well broken to single harness. And I do warrant and
defend the said described horse hereby sold against all and
every person and persons whatever.

In Witness Whereof, I hereunto set my hand
and seal this _____ day of _____ 188

Signature.

276. Chattel Mortgage.—A chattel mortgage is a transfer of the title to chattels with or without possession, as security for a liability or a debt, upon condition that the transfer shall be void if the liability or debt be discharged or paid. If the debt is not paid at the time appointed, the mortgagee becomes absolute owner, and has a right to take the chattels into his own possession if they are not already in his possession, and his creditors likewise have a right to levy on the chattels as his property. But the mortgagor has the right to redeem the chattels from the mortgage, and this right can only be cut off by the mortgagee selling the property and applying the proceeds to the payment of the debt. But, unless the mortgage requires it, he is not bound to sell; he may hold the goods as owner, subject only to the mortgagor's right to redeem. And, when the goods are of sufficient value to pay the debt, his holding them may be regarded as payment.

FORM No. 54.

277. Chattel Mortgage.

To all to whom these Presents shall come:

Know ye, that (here insert name of first party, with town, county and State) of the first part, being justly indebted to _____ (here name of second party, etc.) of the second part in the sum of _____ Dollars, upon (condition that if the said party of the first part shall, and do, well, and truly pay, etc.) have, for the purpose of securing the payment of the said debt, and the interest thereof, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said party of the second part, all and singular the goods, chattels and personal property mentioned and described in the following schedule, to wit: (here give a full and accurate description of the property),

To Have and to Hold the same and every part and parcel thereof, unto the said party of the second part forever. *Provided always, and the condition of these presents is such, that if the said party of the first part pay to the said party of the second part the debt aforesaid, with the interest thereon from the date hereof, in the manner following, to wit: (here mention how and when it is to be paid) then these presents shall be void and of no effect; subject, however, to the provisions hereinafter*

contained; and the said party of the first part do hereby agree to pay the same accordingly.

But if default be made in such payment, or if the said party of the second part shall at any time deem in danger of losing the said debt, or any part thereof, by delaying the collection thereof until the expiration of the time above limited for the payment thereof, the said party of the second part hereby authorized to take possession of the said goods, chattels and personal property, at any time, either before or after the expiration of the time aforesaid, and to sell the same, or so much thereof as may be necessary to satisfy the said debt, interest and reasonable expenses, after the like notice as is by law required for Constables' Sales, and to retain the same out of the proceeds of such sale; the overplus (if any) to belong to and to be returned to the said party of the first part. And it is understood and agreed that the stipulations aforesaid are to apply to and to bind the heirs, executors and administrators of the respective parties.

In Witness Whereof, the said party of the first part ha hereunto set hand and seal this day of in the year one thousand eight hundred and eighty

In presence of

(Signature.)

FORM No. 55.

278. Short Form, Chattel Mortgage.

Know all Men, by these presents, that I, (C. D.) of _____ acknowledge myself to be indebted to (H. S.) of said _____ in the sum of _____ dollars with interest from this date (or from the _____ day of _____ 18) and for the security of said sum I do hereby mortgage, and sell, and assign to the said (H. S.) all my property of every description, situate, lying, and being in my store No. _____ Street, in the Village of _____; and I do hereby authorize and empower the said (H. S.) to take possession of said property and effects, he to sell the same, and to appropriate the proceeds to the payment of such debt and interest.

In Witness Whereof, I have hereunto set my hand and seal, at _____ this _____ day of _____ 18 .

In presence of

(Signature of Mortgagor.)

(Signature of witness.)

FORM No. 56.

279. Chattel Mortgage Renewal.

I, _____
 the _____ Mortgagee named in the Mortgage, of
 which the foregoing is a copy, do hereby give notice to all whom
 it may concern, that there remains due to _____ of the
 principal sum secured by said Mortgage, the sum of _____
 dollars and _____
 cents, and that _____ interest, as such _____
 Mortgagee in the property included in said Mortgage, and
 thereby and hereby claimed by _____ is the sum of _____
 dollars and _____ cents, and the interest
 thereon from the _____ day of _____ 18 .

Dated the _____ day of _____ 18 .

_____ Mortgagee.

FORM No. 57.

280. Chattel Mortgage Sale.

By virtue of a Chattel Mortgage executed by _____
 to _____ dated the _____ day of _____ 18 .
 and filed in the office of the Clerk of the _____ of _____
 on the _____ day of _____ 18 , and upon which
 default has been made, I shall sell the property therein described
 and mentioned, viz : _____
 at Public Auction, at the _____ in the _____
 of _____ on the _____ day of _____ 18 at _____
 o'clock in the _____ noon of that day.

Dated at _____ the _____ day of _____ 18 .

_____ Mortgagee's Agent.

WARRANTY.

281. Sales With Warranty.—Sales with warranty are frequently made, and may be either *general* or *special*, *express* or *implied*. The maxim of the law in regard to buying is *caveat emptor* (*let the buyer beware*); that is, he must look out for his own interests, and examine carefully before he makes a purchase, as he cannot *always* hold the seller as a guarantor.

282. A General Warranty.—A general warranty does not cover *all* defects. Such defects as are equally open to the observation and examination of both parties, or as are known to the purchaser, are not covered by a *general* warranty. But the purchaser may relieve himself from all responsibility concerning defects, and all trouble of examining the goods, by requiring a general warranty against all defects. But if a defect is *known* to the purchaser it will not be considered as coming within the warranty.

283. An Express Warranty.—An express warranty may be any direct affirmation made by the seller in regard to the goods at the time they are sold, with that intent. But the vendor will not be bound beyond the express terms of the warranty. Nor will he be bound for representations made *after* the sale, for the reason that there is no consideration to support them. The warranty must operate as an inducement to the completion of the purchase to be effective. Declarations of *opinion* do not constitute a warranty, but if they are intended to, and have the effect of deceiving, the sale may be avoided on the ground of fraud.

284. Special Warranty.—When a particular thing is ordered for a special purpose of a manufacturer, and it is furnished, the purchaser may hold the manufacturer responsible on

an implied warranty that it is fit for the purpose for which it was ordered, and if it is not suitable for the purpose, and damage is sustained in consequence, the vendor will be liable for the damage. But where the purchaser himself selects the thing to be used, the vendor is not bound by any warranty.

285. Implied Warranty.—When a person sells personal property which he has in his possession at the time of sale, there is an implied warranty that he is the owner. But where property is sold which is *not* in possession of the vendor, there is no such implied warranty, unless he affirm that he is the owner. If, however, the situation or nature of the goods is such as to render an examination impracticable, there will be an implied warranty that they are merchantable.

286. Breach of Warranty.—The rule in regard to breach of warranty seems to be that the purchaser has no authority for returning the property which he bought, unless there was an agreement under the warranty that he might do so; his only remedy being to sue for damages under the warranty. But where the vendor knows that a thing is ordered for a special purpose, and it is not fit for that purpose, the buyer may return it, if he do so as soon as its unfitness is discovered.

287. Sales by Sample.—Where goods are sold by sample there is usually an implied warranty that the goods shall be as good as the sample. But the warranty does not apply to the quality of the sample, so as to make it just what it seems to be. All that the vendee can claim under the warranty is that the bulk shall be equal to the sample. But some sales which are made by sample do not create an implied warranty. The rule is, that if the bulk of the goods is fully exposed within the immediate reach of the purchaser, it devolves upon him to examine it, and if he fail to do so, he cannot recover, unless there be an express warranty. It is only where there is a mutual understanding between the parties that they are dealing under a promise from the vendor that the bulk shall be as good as the sample, that an implied warranty exists.

288. Descriptive Bill of Sale.—There has been some difference of opinion as to whether a descriptive bill of sale constituted a warranty or not. A case is reported in Massachusetts where the bill of sale was as follows: "B. & Co. bought of F. M. & Co., two cases of *Indigo*." But the discovery was made that it was mostly *Prussian Blue* instead of indigo. There was no charge of fraud, and the point was, does the bill of sale constitute a warranty? It was held that it did. But in the sale of a horse, where a receipt was given, "Received of C. D. one hundred dollars for a black, six-year-old horse, warranted perfectly sound," it was *held* that the color did not form a part of the warranty, unless it were a wilful misrepresentation.

The courts of Pennsylvania hold that a bill of sale is a warranty of the *kind* of goods but not of the *quality*. A bill of sale describing the goods as "*superior, sweet-scented Kentucky leaf tobacco*," was held by the court to be a warranty, only that it should be "*Kentucky leaf tobacco*," and that it did not warrant the *quality*. But this seems to be at variance with decisions which have been made in other States.

289. Executory Contract Warranty.—When goods are to be manufactured, or furnished for a particular purpose, there will be an implied warranty that the goods shall be adapted to the purpose for which they were ordered. One reason for this is that the purchaser has no opportunity to examine the goods when they are purchased.

290. Warranty Against Latent Defects.—There will always be an implied warranty against latent defects when the vendor knows that the purchaser depends upon him instead of using his own judgment in relation to defects which were known or might be known to the seller, and where he could have guarded against the defects. Such implied warranty is grounded in the trust confided in the vendor by the vendee.

GUARANTY.

291. A Guaranty.—A guaranty is an undertaking to answer for the payment of some debt, or the performance of some duty, in case of the failure of another liable for such payment or performance.

292. The Essentials.—The essentials of the contract of guaranty are, *first*, the *consideration*; *second*, a *principal debtor*; and, *third*, the *consent of the party to whom given*.

293. Consideration.—The consideration is indispensable to the contract, and its analysis is the same as that of ordinary contracts, with the notable difference that the benefit or advantage to be derived from it, instead of being in favor of the guarantor, must accrue to the party in behalf of whom the promise is made. The guarantor need not, and generally does not, derive any benefit from the contract. When the original debt or duty is grounded upon a good consideration, it will support the promise of the guarantor if the promise was made at the same time, or before the original debt. But if the debt or duty had already been incurred there must be a new consideration to support the guarantor's promise. If there be a benefit to the person for whom the guaranty is given, or an injury to the party who is to receive it, it will be a sufficient consideration when the guaranty was given on account of it.

294. A Principal Debtor.—As the undertaking of the guarantor is *conditional* or *accessorial*, there must be a *principal* debtor to whose obligation the guarantor's contract must relate. The guaranty cannot be larger than the principal obligation, although it may be smaller. The guaranty of a debt for an infant or a married woman, which is at first accessorial, may become a principal debt on account of its not being enforceable at

law against the original debtor, but may be enforced against the guarantor, and for this reason a guarantor is sometimes required. Generally, however, the liability of the guarantor is measured by that of the principal. So when the liability of the debtor is lessened by the consent of the creditor, it generally lessens the guarantor's liability in the same ratio.

295. Consent of the Creditor.—The consent of the creditor to accept the guaranty must come to the knowledge of the guarantor or the contract will not be binding. An offer to become a guarantor is not legally binding unless the party to whom it is offered signifies his acceptance. But there will be an implied acceptance if some act is done, on the strength of the guaranty, by the party to whom it is given at the time the offer was made.

When the guaranty is absolute, no notice of acceptance is required in New-York, unless it is requested. The following are common forms of guaranty:

296. FORM No. 58.

BUFFALO, May 4th, 1882.

In consideration that Mr. J. Wells will supply the bearer, C. Monroe, with groceries not to exceed the value of twenty-five dollars, at thirty days credit, I agree to be responsible for the payment of the same.

R. E. SLOAN.

297. FORM No. 59.

NEW-YORK, April 1st, 1882.

Mr. O. P. GIBBS,—I am informed by C. Green, the bearer, that he is indebted to you to the amount of forty-four dollars, which becomes due to-morrow. If you will give him an extension of time for the payment until the second day of May, I hereby guarantee the payment.

DANIEL WEBB.

298. Liability of Principal Varied.—Should the liability of the principal be materially varied by the person to whom the guaranty is given, without the consent of the guar-

antor, the liability of the latter would be terminated. If, for instance, Mr. Wells should supply C. Monroe with *fifty* dollars worth of groceries, or Mr. Gibbs should extend the time *three months*, the guarantor would not be liable. And where a party became surety for the faithful performance of the duties of a collector of taxes for a certain number of townships, and after the bond was signed, other townships were added, the Supreme Court of the United States held that the surety was not liable. So, also, where a person was surety for the faithful performance of the duties of a cashier in a partnership, under the firm-name of "Smith & Co.," consisting of *four* partners, and one of the partners went out of the firm, but the same business was continued under the same name, and the cashier became a defaulter, it was held that the surety was not liable.

299. The Statute of Frauds.—This statute enacts that "No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." The general provisions of this act apply directly to the contract of guaranty. And where a person rode a horse to death without any permission from the owner, and A. verbally guaranteed to pay the owner a sum of money in satisfaction of the loss, on condition that suit should not be brought against the offender, it was held to be a promise within the statute, and therefore void.

300. Liability Renewed or Extended.—When the obligation is extended by law, the guarantor will be discharged. As where a joint stock company was incorporated for a term of ten years, and was at the expiration of that time renewed for ten years more, and the same officers and business go on as before, the sureties to the bond for the faithful performance of the duties of the cashier were held not to be bound beyond the original time. But where a bond is given for the faithful performance of the duties of a city or county treasurer, as such,

the bond continues in force through several administrations, unless the sureties are formally released, because the *office* never terminates. A guarantor cannot renounce his own liability.

301. Negotiability of Guaranty.—When a general guaranty is made on the face of a note or draft, which is payable to the order of the payee or to bearer, it is negotiable with the note or draft, and goes with it, and is good in the hands of any payee. If, however, a person writes on the *back* of a note, before delivery to the payee, his name in blank, his liability would not be the same in different States. In some he would be held liable as a surety, but in New-York he would be held as an indorser, and it would be the safer way in all such cases to notify such parties of the non-payment if it is not paid at maturity.

302. Guaranty Strictly Construed.—The general rule in regard to the construction of a guaranty, is that it must never be extended by implication, and that the guarantor's liability is only equal to that of the principal, and is limited to the particular transaction in regard to which it was assumed. If it is special, and relate to a particular person, he only can hold the guarantor liable, and he is not bound beyond a fair construction of the terms of the guaranty. And if the guaranty relate to a particular office, it embraces only such things as properly belonged to that office *at the time* the guaranty was given. As where a bond was given as security for a collector of customs, and after it was given *new* duties were laid, and he was authorized to collect them, it was held that the bond did not extend to the new duties. But the guarantor will be bound for anything which can be fairly included within the terms of the contract.

303. Illustrations.—The following forms are given as illustrating the difference between a restricted and a continuing guaranty:

304. FORM No. 60.

"The object of the present letter is to request you, if convenient, to furnish Messrs. H. with any sum they may want as far as \$50,000. We shall hold ourselves answerable to you for the amount." *Held* not continuing.

305. FORM No. 61.

"I agree to be responsible for the price of goods purchased of you, either by note or account, at any time hereafter, to the amount of \$100." *Held* to be a continuing guarantee to the extent of one hundred dollars for goods sold at any time before the recall of the credit.

306. FORM No. 62.

"We consider Mr. J. V. E. good for all he may want of you, and we will indemnify the same." *Held* not continuing.

307. FORM No. 63.

"In consideration of your supplying groceries to K., at two months' credit, I agree to guarantee his present or any future debts to the amount of \$60. Should he fail to pay at the expiration of the above credit, I hereby bind myself to pay you within three days from the date of receiving notice." *Held* to be a continuing guarantee, but restricted to debts already contracted, and to debts upon the credit of *two months*.

308. Liability of Guarantor.—The liability of the guarantor does not commence until the debt falls due, and the principal debtor fails to pay. And he will not then be liable if the debt was illegal in the beginning. Nor will he be liable if the principal's indebtedness was conditioned upon the performance of some act to be done by the creditor, which has not been performed. Or, if the surety's liability was dependent upon some condition which required something to be done by the creditor, which had been neglected, the creditor could not proceed against him until the thing had been done. As if it had been agreed that a demand should be made upon the surety within a certain number of days after default of the principal, and it had not been made.

309. Creditor's Right to Securities.—Not only has the creditor a right to proceed against the surety when his liability has been secured by the default of the principal debtor, but he has a right, also, to demand from him any securities which have

been put into his hands to indemnify him against loss if called upon to pay.

310. Discharge of Guarantor.—Inasmuch as the contract of the guarantor is made without benefit to himself, there is always an implied agreement on the part of the party to whom the guaranty is given that he will use every reasonable effort to enforce payment by the principal debtor. And he is bound to show that, in this respect, he has performed his duty. The guarantor may be discharged: *First*, by *want of notice*; *Second*, by *expiration of time*; *Third*, by *alteration of contract*; *Fourth*, by *release*; *Fifth*, by *merger*; *Sixth*, by *giving time to the principal*; *Seventh*, by *fraud*; *Eighth*, by *extinguishment*.

311. Want of Notice.—If the guaranty applies to transactions which are to take place in the future, and requires an acceptance from the party to whom it is given, the guarantor is discharged unless such notice of acceptance is given.

312. Expiration of Time.—Expiration of the time may work a discharge of the guarantor where the time for which it was undertaken was limited. When the time was not limited the guaranty can be terminated by giving notice. So, also, where the time was not limited it may be discharged by the operation of the *statute of limitations*. The guarantor may also be discharged by *payment* made either by the principal or himself.

313. Alteration of Contract.—By alteration of contract, if made without his consent, whether it prejudice his interest or not, the guarantor will be discharged, for the reason that he may insist upon the very terms of the agreement. The contract of the guarantor being dependent upon that of the principal debtor, if he is discharged, or additional time is given him without consent of the surety, the guarantor will be discharged.

314. Release.—Release of the principal will discharge the guarantor, and a release of the principal may sometimes be inferred, as where the written obligation has been returned to the principal debtor. A release of the guarantor does not release the principal debtor.

315. Merger.—A merger of the debt, for which the guaranty was given, will discharge the guarantor. Where the guaranty was given to secure the payment of a book account, and the principal debtor gives his promissory note in settlement of the account, the book account is said to be *merged* in the note, and the guarantor will be discharged. Any higher security which is taken to secure a former debt is said to *merge* the former debt in the better security; that is, it takes up or destroys the previous debt, and creates a new one.

316. Giving Time.—If the creditor give the debtor more time without the consent of the guarantor, it will discharge the latter, as it is equivalent to an alteration of the contract.

317. Fraud.—The concealment of some material part of the principal's original contract from the surety vitiates and avoids his engagement. "If, with the knowledge or assent of the creditor, any material part of the transaction between the creditor and his debtor is misrepresented to the surety, the misrepresentation being such that, but for the same having taken place, either the suretyship would not have been entered into at all, or, being entered into, the extent of the surety's liability might be thereby increased, the security so given is voidable at law on the ground of fraud."

318. Extinguishment.—The liability of the guarantor may sometimes be terminated by reason of the rights of the creditor and the liabilities of the debtor becoming united in the same person and thus extinguishing both the rights and the liabilities. If, for instance, a person become a guarantor for a principal debtor whose uncle is the creditor, and the uncle dies, leaving the debtor heir to his estate, the debtor then becomes creditor for the same debt, and the whole thing is extinguished, and, therefore, the guarantor is discharged.

319. Rights of Guarantor Against Creditor.—It sometimes happens that the principal debtor puts into the hands of the creditor some kind of property to secure the payment of the debt for which the guaranty is given. In that case, if the principal fail to pay, the guarantor may pay the debt and demand

the securities which were held as a pledge by the creditor if they were pledged for the same debt that he became liable for. And this he may do whether he knew there were any securities at the time he became guarantor or not.

320. Rights of Guarantor Against Principal.—The guarantor has no right against the principal debtor until the debt falls due, and the default of the debtor. As soon as the debt becomes due he may immediately pay it, and take the place of creditor, and become possessed of all his rights in regard to any securities the creditor may have, and may commence at once to collect the debt from the principal.

321. Rights of One Guarantor Against Another.—Where there are co-sureties for the same debt they are each liable for the whole debt, and, if the creditor collects the whole sum from one surety, that surety may recover from each of the others their proportion of the whole debt.

FORM No. 64.

322. Guaranty of Rent.

In consideration of the letting of the premises above described, I guarantee the punctual payment of the rent, in the above agreement mentioned to be paid and performed by said lessee, without requiring any notice of non-payment, or proof of notice, or demand being made whereby to charge me therefor.

(Signature.)

FORM No. 65.

323. Guaranty of Collectibility.

For value received, I hereby guarantee the collectibility of the within note.

(Signature.)

FORM No. 66.

324. Guaranty of Payment.

For value received, I hereby guarantee the payment of the within draft.

(Signature.)

LIEN.

325. Lien.—A lien is a right to retain property until the purchase price, or some charge or expense due upon it, is paid. It rests upon possession, and is the right to maintain it. If, therefore, the lien holder allows the goods to go out of his possession, he loses the right. Liens may be either *legal* or *equitable*. The seller of goods has a legal lien upon the goods sold for the purchase price, so long as they remain in his possession. A sale of goods implies that payment of the price should be made, and, unless a credit was agreed upon, the buyer cannot take the goods, nor sue for them until he tenders payment. The seller can retain the goods under the right of lien until the price is paid. If, however, the goods are sold on credit, the buyer may take possession at any time, but, if the goods are not taken until the payment becomes due, the seller's right of lien is revived. So, also, if before delivery of the goods the purchaser should become insolvent the right could be exercised by the vendor.

326. Delivery of Part.—The delivery of part of the goods does not destroy the right of lien on the remaining part. The rule is, that every part of the goods is subject to lien as long as it remains in the possession of the vendor. Even where the delivery of a part is held to be a delivery of the whole, it does not destroy the right. And, if a part of the purchase price has been paid, it does not interfere with the right of lien for the balance. The principal also has the right of lien on goods which are in the possession of his factor, or of a person who received them from the factor if he was notified of the claim. Where part of the goods have been delivered, the remaining part may be held for the *whole debt*.

327. An Equitable Lien.—An equitable lien may be created when a thing is not in existence, but is expected soon to come into existence: as where a manufactory is leased, and the owner is to be secured the rent by a lien upon the articles to be manufactured, the lien to become operative as soon as the articles are produced. The party who claims the right of lien is not the *owner* of the property upon which the right is to be exercised; the title is supposed to be vested in some other person. Liens may exist in equity without actual possession.

328. Lien of Agent.—An agent may have a lien upon the property of his principal which may be in his possession, and it may be either a general or a special lien. The general lien is the right to hold the property for the security of any claim he may have against the principal, while the special lien is for some charge or claim on the particular goods which are held. The claim may be for services rendered, or for expenses, or money advanced, or for a balance due on settlement. The lien may result from an agreement between the parties, or from the usage of trade. The usage of trade gives factors a general lien for all claims which arise from the agency business, and so the agent has a lien for all liabilities incurred in relation to the agency. But if a consignment is made to an agent, with particular instructions to apply the proceeds resulting from the sales to the payment of a particular debt, he could not hold the money by right of lien to indemnify himself for a balance due from the principal.

329. Lien of Mechanics.—In most of the States mechanics have a lien upon the property upon which they work to secure the payment of their wages. But there are certain limitations and requirements in regard to this right, concerning which the laws of the different States are not entirely uniform. The *time* within which it may be exercised is limited, usually from thirty to ninety days. In some States the work must be done under a *written* contract, and a public record must be made of it. Some require a written notice to be given of the mechanic's intention to exercise the right of lien. These conditions are required to protect the owners and purchasers of the prop-

erty upon which the work has been done from being defrauded. If, for instance, the time were unlimited, no person would be safe in buying property and paying for it, as he might be subjected to claims of any amount for work which had not been paid for by a previous owner.

330. Lien of a Common Carrier.—The common carrier, by reason of his being under obligation to carry goods for any person who may offer them for carriage, is given the right of lien to secure the payment of the charges for carriage. His lien is of the nature of a pledge, and he may not only hold the goods for the charges upon them, but, if they are not paid, he may, after a reasonable time, give notice that the goods will be sold, and, if they are not redeemed, may sell a sufficient amount at auction to indemnify himself for the charges.

331. Lien of Bailees.—A bailee who performs labor and services upon the property of the bailor, and thereby changes its character and increases its value, is entitled to the right of lien to secure the payment of his charges. But it does not apply to cases where money and services have been expended upon the property, but no changes made in the property. The keeper of a boarding stable has no lien upon a horse for his keeping. But if the horse has been trained for trotting by direction of the owner, as well as kept, he has a lien for his charges.

332. Lien of Innkeepers.—An innkeeper has a lien upon the luggage of his guests for the charges for their accommodations. But he has no lien on luggage which is being kept for a person who is not a guest. Neither has he any lien on horses which are sent to the hotel for keeping by a person who is not a guest.

333. Termination of Lien.—As no lien can exist unless there is a debt or claim also existing at the same time, therefore, if the debt or claim is paid, or a credit given, the lien is at once terminated. So, also, if the possession of the goods is voluntarily surrendered, the lien is terminated. The debt or claim must be due to the person who intends to exercise the right of lien, and not to another. If when a party has the right

of lien he does not assert it, but claims to hold the property on some other ground, he will be considered to have waived his right of lien. When a debt is secured by a lien upon property, if some different arrangement is made for paying the debt, the lien will be lost. A lien is immediately destroyed by giving a credit, and it makes no difference whether it was given by agreement between the parties, or by the usage of trade.

334. The Continuance of Lien.—A lien, when in full force, will continue until the debtor pays, or tenders payment to the creditor, or until the property is voluntarily given up by the party who has the right of lien. A delivery sufficient to pass the title of the property may be made without losing the right of lien, as where an entire contract of sale is made and, a portion of the goods have been delivered, the effect of which will be to transfer the title to the whole, but the right of lien on the balance will not be destroyed.

COMMON CARRIERS.

335. Common Carrier.—A common carrier is a person who undertakes the carriage of goods from one place to another for any person who chooses to employ him for a compensation. Express, steamboat, and railway companies, cartmen, canal-boat owners, and all persons whose business it is to carry goods for the public for hire, are common carriers. It is not necessary that the compensation should be a definite sum; it may be according to the amount earned, based upon a scale of prices. But it must be when earned in the nature of a debt, recoverable at law, and not a mere gift. Carriers who make it their business to carry passengers are not considered as common carriers, and are not liable as such, except in respect to their baggage. There are three necessary elements to constitute a common carrier: *First*, he must make a business of it; *second*, he must carry for all people indifferently; and, *third*, he carries for hire.

336. Carries for All.—The common carrier carries for all who offer goods for transportation that come within the classes of goods which he is engaged in carrying. Thus he differs from one who carries only by special contract, and does not hold himself out to carry indiscriminately for the public. He is not obliged to carry goods that are dangerous nor such as are unlawful.

337. Carries for Hire.—The common carrier acts upon the principle that the laborer is worthy of his hire, and charges a compensation for the services rendered, and for the risks incurred in the transportation of the goods. Generally, he has no right to charge one person any more than another ratably. His charges may be regulated by custom, or by law, or by agreement between the parties. If he assume extraordinary risk, his charges may be correspondingly high.

338. Standing Offer to the Public.—The carrier continually holds out to the public an offer to receive goods for transportation, and he has no right to refuse to take goods from any one if they come within the line of goods he carries, and he still has means of conveyance. If he refuses to accept goods when offered, except for the reason of inability to carry, or not being of the class of goods carried, he makes himself liable to an action for damages. If, however, the owner of the goods intend to bring an action for damages, he must tender to the carrier the charges for transportation, for the reason that the carrier is not legally bound to receive the goods unless the freight is prepaid. Nor is the carrier under obligation to receive freight an indefinite length of time before he is ready to start upon its carriage.

339. Private Carrier.—A private carrier is one who makes special contracts for the transportation of goods for hire, or carries for certain individuals only, and has a right to refuse to carry for any others who may offer goods for conveyance. If his occupation is such that he has no right to refuse any person, then he is a *common* carrier. A mere carriage for hire, in any particular case where it is out of the usual line of his business, does not make one a common carrier, unless there is an agreement between the parties that he shall assume the responsibility and liability of a common carrier. A private carrier is only liable as an ordinary bailee for hire, and is only responsible for ordinary diligence.

340. Liability of Common Carrier.—The liability of the common carrier begins as soon as the goods have been completely delivered to him; and the acceptance of the goods for transportation, at any place by the carrier, fixes his liability. An acceptance of some kind is indispensable to fix the liability; therefore, if the goods are in charge of the owner when lost, the carrier will not be liable. When the goods are fully accepted by the carrier, he assumes the responsibility of an insurer, and is liable for all losses unless they happen from inevitable accident, or from public enemies, or from perils of the sea, or from what is called an act of God. "An act of God" means

some act in which neither the carrier nor any other person had any direct and immediate agency. But a person may be a common carrier in respect to some things, and a private carrier in respect to others; thus, his principal business may be confined to carrying goods, yet at times he may carry a package of money for a friend or neighbor, and, in that event, he will only be responsible for want of ordinary care in relation to the money, while, if it were a part of his regular business, he would be liable as a common carrier. He is also liable for all losses which result from the acts of his own servants, even if he take every possible precaution to avoid such losses. If goods are lost, the presumption is, that it resulted from his carelessness, and he can only avoid liability, by proving that the loss came within one of the cases which exempts him from the liability.

341. Acceptance of Goods.—The carrier's liability does not begin until the goods have been delivered to him or to his agent, and have been accepted. But the acceptance may be either actual or constructive. When the goods for carriage are left at the proper place, and the carrier is notified of the fact, it is a sufficient delivery to hold him responsible; but not unless the carrier or his agent has knowledge of the fact of the goods being left. Generally, when the goods are delivered, the common carrier acknowledges the delivery and acceptance of the goods, by giving a receipt, as on following page.

342. Liability of Successive Companies.—A question of much importance frequently arises in regard to the liability for loss where there are successive companies of common carriers over a continuous route of travel, but each a separate and independent company. For instance, goods are shipped from Buffalo, N. Y., to New Orleans, and there are, say, four separate railroad companies, and the goods are lost in the hands of the third company. Is the company which received the goods at Buffalo liable, or only the third company in whose hands they were lost? The statute law of New-York, passed in relation to railway carriers, makes the receiving company liable to the owner, and gives it the right to collect from the company which lost the goods.

343. FORM NO. 67.

New-York Central & Hudson River Railroad,

Buffalo, N. Y., July 4, 1882.

CONTENTS OF PACKAGES UNKNOWN.



MARKS AND DESTINATION.

D. Appleton & Co.,

445 Broadway,

New-York.

the following articles (contents unknown) in apparent good order, viz.:

One Box Books.

Marked and numbered as per margin, which the New-York Central & Hudson River Railroad Company agree to carry from *Buffalo* to *New-York* but not to transport them, or any goods, beyond the limit or terminus of their own Railroad, upon the following conditions, viz.: That the shipper or owner does hereby release the New-York Central & Hudson River Railroad Company from liability for Leakage of all kinds of Liquids, Breakage of all kinds of Glass, Carboys of Acid, or articles packed in Glass, Stoves and Stone Furniture, Castings, Machinery, Carriages, Furniture, Musical Instruments of all kinds, Packages of Eggs, or for damage or loss on Hay, Hemp, Cotton, or any article the bulk of which renders it necessary to be shipped in open cars; or for damage to perishable property of all kinds, occasioned by delays from any cause, or change of weather, or for damages or loss by fire while in the Company's Depots; and the acceptance of this receipt by the shipper constitutes the agreement for the transportation of the above described goods or property.

James Macmillan, Agent.

344. Care of Goods.—It has already been stated that the common carrier is an insurer of the safety of the goods. He must receive them at suitable times, and in a proper way, and at a suitable place. He is also bound to comply with such reasonable and suitable instructions as the owner may give, as where a package is marked "glass—with care—this side up," he is bound to comply with the directions. So, if a package is marked, "to be kept dry," the instructions must be followed; the goods must be carried in the manner and position indicated by the notice. He must exercise more than ordinary care over the goods while in course of transportation; he must take the best of care, not only during the carriage, but at intervals of stopping during the transportation, and until the goods are delivered. He must also provide suitable vehicles for the conveyance of the goods, and keep them in proper repair, and must employ capable servants to take charge of them. Must not expose the goods to improper danger; and if he receive any reasonable and proper special instructions from the sender, and does not obey them, and the goods are lost, even by perils of the sea, he is bound to prove that the loss did not result from his disobedience of the instructions.

345. Restricted Liability.—The strictness and the severity of the liability to which the common carrier is held have caused many attempts to limit or restrict it. This has generally been attempted by giving notice to the owner; for instance, as "all baggage is at the risk of the owner." The courts have held that such notice does not restrict the liability. But the carrier can make a special contract with the other party, in which he may restrict his common law liability as insurer of the goods, but he cannot escape them as bailee; as such, he will be responsible for want of proper care. He may, however, limit his liability, by giving a general notice that the goods shall be delivered in some particular way, and that the value of the goods shall be made known, and that he will not be answerable for goods above a certain price, unless a higher price is paid for the carriage. The policy of the law is to hold the carrier strictly accountable for any neglect or loss to the goods carried.

346. Termination of Liability.—The carrier's liability terminates when the goods are properly delivered at the place of destination to the consignee, at the specified time; or, if no time is specified, within a reasonable time. The contract to deliver is sometimes suspended by an unavoidable obstacle, as the freezing up of a canal, but if the carrier has used all reasonable efforts to overcome the obstacle, the law will excuse him, and he may deliver when the canal is again open for navigation.

347. Place of Delivery.—The delivery may be made to the consignee at his place of business, or at a general warehouse, or on board a lighter, or on a wharf, or dock, if there is a well-established custom of that kind of delivery at the place, but notice must generally be sent previously to the consignee or owner. If any particular place for delivery is agreed upon, it must be at that place. If the consignee refuse to accept the goods, the carrier must take care of them, or have them stored in some suitable place for the owner.

348. Delivery to Right Person.—The carrier will not be discharged of his liability until the delivery is made to the right person, who is commonly the consignee. If delivered to any other person by mistake, the carrier will be responsible as for a conversion of the property. The delivery may be made personally to the consignee, or to his authorized agent. If the consignee is dead, or cannot be found after due diligence, then the carrier will be discharged from further liability by storing the goods with some proper person on the owner's account.

349. Warehouseman.—When the goods have been delivered to a warehouseman the liability of the carrier ceases and that of the warehouseman begins. The latter is not liable as insurer, but only as bailee, and is only responsible for want of ordinary care. And even where the warehouse is owned by the carrier the effect of delivery is the same.

350. Person to Pay Freight.—The carrier may demand prepayment of charges for freight if he choose, but, in most cases, it is customary to carry the goods and collect the freight

from the consignee. If the consignee refuse to pay the freight, or price of freight, the carrier has two means of collecting it: *First*, the carriage gives him a property interest in the goods which entitles him to the right of *lien* the same as if the goods were pledged to him as security for the payment of the freight; *second*, he has a right to bring an action in a court of law against the owner of the goods with whom he made the contract for the carriage, by proceeding against him personally.

351. Lien of Carrier.—This means the right to hold and keep possession of the goods carried until payment of the freight, and, when he is unable, after due diligence, to deliver the goods to the consignee, and deposits them in a warehouse, the deposit is subject to the lien. If the carrier claim to hold the goods for some other purpose than as security, he will lose his right of lien, and so he will if he voluntarily give up the goods for any reason. If he assume to own the goods, or applies them to his own use, he is guilty of a conversion of them. If the freight is not paid within a reasonable length of time after it is due, and has been demanded, the carrier may apply to a court of equity for a decree of sale, and the court will, on due proof, cause the goods to be sold and decree payment to the carrier after payment of the costs and expenses, and retain any surplus for the benefit of the owner. Unless expressly authorized by the court, the carrier cannot buy the goods or any part of them at the sale.

SHIPPING.

352. Shipping.—The meaning of shipping as used here is the transportation of goods by water, whether carried upon the ocean, the lakes, rivers, or canals. The immense amount of transportation carried on by ships and boats of various kinds makes it important to understand the principles of law which relate to and govern the shipment and carriage of goods by water. The transportation of goods, whether by land or by water, usually comes within the scope of the common carrier, and is treated of generally under that head. The principal parties concerned in the transportation of goods by water are, first, the owners of ships or boats; and, second, the owners of the goods to be carried.

353. Ship Owner.—The owner of a vessel does not always run it himself, nor is it always run in his interest as a common carrier. Frequently ships are let to other parties, who use them to carry goods for the public, and thus they become common carriers.

When a ship is so let, or leased, it is said to be *chartered*, and the contract by which a ship is chartered is called the *charter-party*. This contract, or charter-party, is a written instrument (generally partly printed and partly written) by which the vessel, or part of it, is let or leased, either to the owner of the goods to be shipped, or to a middle man, who intends to carry the goods for the owner. The party who hires the vessel is called the *charterer*.

354. Owner of Goods.—The owner of goods to be shipped may charter the whole, or only a part of a vessel, as the case may be, and it may be for the season, or only for a particular voyage. If the whole ship is chartered for the season, the charterer generally employs the officers and the crew, and has the

entire control and responsibility of the vessel, and for the time is deemed the owner. But much of the shipping by lake, river, and canal is carried on by season contracts, whereby the owners of boats covenant to run through the season between certain points, and carry all goods that may be specified in a bill of lading, with certain exceptions, at specified rates.

355. Charter-Party.—The charter-party embraces a contract which is defined to be, “that by which an entire ship, or some part thereof, is let to a merchant, or some other person, for the conveyance of goods, on a determined voyage to one or more places.” This instrument (the charter-party) is generally made by the owner of the vessel, but may be made by his authorized agent, and is sometimes made by the master of the vessel. The terms of the charter-party are to be strictly enforced, and cannot be varied by parol. A clause is generally inserted, exempting the owner from liability, when a portion of the vessel is chartered, provided he cannot fulfil his contract, by reason of circumstances over which he has no control. If the charter-party is for a single voyage, it generally provides that the ship shall be in good condition, and seaworthy, ready to sail on a specified day. It usually describes the voyage which is to be performed, and the time to be allowed for discharging the cargo, and stipulates the amount, or rate, to be paid for freight.

356. General Ship.—When a ship is not chartered, but carries goods for the public generally, it is called a general ship. It is usual to advertise such ships as being open and ready for the transportation of freight. It offers to take goods for any one and every one, as far as it has capacity, without partiality. Such a ship is a common carrier, and has no right to refuse to carry goods for any one if they are such goods as are usually carried, and there is still room for conveyance.

The rights and liabilities of the owners of a general ship are the same as those of a railroad company or any other common carrier.

357. Bill of Lading.—When a contract has been made with a general ship for the transportation of goods, it is em-

bodied in a bill of lading, which is made out and signed by the master of the vessel. The bill of lading is a receipt for the delivery of the goods, and a contract between the master of the vessel and the shipper of the goods for their carriage. It is customary to make out three bills, one of which is marked *original* the other two being *duplicates*. These three bills constitute but one contract, but the bills are each for a particular person; one is for the shipper, one for the master of the vessel, and the other for the person to whom the goods are sent, called the *consignee*. As we have already seen under negotiable paper, a bill of lading is transferable by indorsement, and is often used as collateral security for a loan of money. The shipper, called *consignor*, to whom the bill is sometimes made out, may transfer it, and when so transferred, for value, it passes the title in the property to the indorsee.

The power to transfer the title of the goods by an assignment of the bill of lading remains to the shipper as long as the property is in the hands of his agent, or a common carrier.

358. Duties of Ship-owner.—Not only must the owner of the ship or vessel see that she is tight, staunch and strong, fit for the voyage, but he is under obligation to keep her so during the voyage. He must also supply the ship with a suitable crew, and capable officers, and must see that she is duly provisioned, and, when it is customary, he must employ a pilot. He must also see to the careful stowage of freight, and exercise due care over it during the voyage. If it is injured by improper stowage he will be liable. The master must also have on board the proper manifest and other documents necessary for the protection of the vessel. He must deliver the goods in the customary manner and at the proper place.

359. Duties of the Merchant.—The merchant (or owner of the goods) must have the goods ready for shipment at the proper time. He is also sometimes required to pay *primage*, which is a small customary payment to the master for his care and trouble. *Freight* is said to be the price of *carriage*, and therefore is not due until the carriage is completed. But if pre-paid, and the goods are not carried, by reason of any event not

imputable to the shipper, it is to be repaid, unless there is a special agreement to the contrary. Where goods are sent in a general ship, the amount of freight depends upon the agreement of the parties, or the value of the services performed, estimated according to the custom in such cases. The carrier has a lien upon the goods until the freight is paid.

360. Maritime Loan.—When a vessel meets with an unforeseen disaster which necessitates a loan of money in order to complete the voyage, the law confers upon the master unusual privileges, and gives him the right to pledge the ship, and sometimes the cargo, also, to raise the necessary funds. This is done by giving a *bond* for the repayment of the money, either upon the ship, or the cargo, or both. If it is given on the ship, it is called a *bottomry* bond; when given on the cargo, it is called a *respondentia* bond. These loans can only be made in cases of *real necessity*. The bond is a mortgage upon the ship, and where after one loan it becomes necessary to make a second one on the ship for the same voyage in order to complete it, the second mortgage has the first lien or claim for payment, on the ground that the first could not have been paid unless the second had been made. The repayment of the loan depends upon the voyage being completed, and the safe arrival of the vessel. The lender takes all the risk of the voyage, but the loan must be *necessary*, or he has no security.

361. General Average.—When a ship, which is heavily laden, is caught out at sea in a severe storm, it sometimes becomes necessary to cast overboard some portion of the cargo in order to save the rest. In such case where goods are lost *for the preservation of the rest*, the owner of the goods lost is indemnified by contribution; each portion of the cargo paying its respective part according to its value, and the assessment which is made upon all the property which was at risk according to its valuation, is called *general average*. There can be no general average unless the whole property was in jeopardy, and the loss or injury must be *for the good of all*, and it must be *voluntarily* incurred. The principle of general average is just and reasonable. All the property at risk, including the part which

was lost, pays its proper share towards making up the loss. To bring any case within the rules of general average there must : First, be a *necessity* for the sacrifice; second, it must be a deliberate and *voluntary* act of the master of the ship; and, third, it must be for the *general good*. When the necessary conditions have been fulfilled, the ship, freight, and cargo must contribute in their respective proportions to indemnify for the loss. A general average confers a lien upon the parcels of cargo, ship, etc., on which it is charged.

362. Contributing Interests.—Not all the property at risk is assessed; provisions are exempt, and wearing apparel and jewelry of passengers; only freight-paying goods contribute. When the settlement is made at the port of destination, the goods lost are estimated at their value there, and so with the contributing property; the ship is valued at what it was worth before it started, less the wear of the voyage. The custom is to make out a list of the articles that are to contribute, including the lost property, and, also, an account of the losses; these are placed in the hands of an average broker who makes the adjustment.

363. Salvage.—Salvage is a compensation made by the owners of a ship, or of goods, to some person or persons, for saving the property from impending peril, or for recovering it after being lost. Generally, large compensation is allowed in such cases to induce persons (sometimes called *wreckers*) to incur danger—oftentimes very great—in their efforts to save property. The justice and policy of making large awards for incurring such peril has been acknowledged by all nations. A person may be entitled to salvage, either by rescuing property from perils of the sea, or from the hands of an enemy. If a ship is abandoned at sea, and is afterwards brought into port by another party, he is entitled to salvage, and has a right of lien on the property to secure his compensation, which is called *salvage*. The amount of salvage is regulated by the amount of risk incurred, and is generally from one-fourth to one-half the value of the property saved.

FORM NO. 68.

364. Charter Party, Giving Possession to the Hirer.

These Articles of Agreement, *made and entered into this first day of July, 1882, by and between Smith Davis, of Chicago, of the first part, and Robert Owen, of the City of Cleveland, of the second part, witnesseth: the said party of the first part has this day chartered and hired unto the said party of the second part, the propeller Dakota, of Chicago, and of the burden of 500 tons or thereabouts, with all the appurtenances, cables, anchors, chains, etc., which belong to said propeller, for the term of four months from the 15th day of July, to be delivered at the port of Cleveland. But in case the said Smith Davis shall deliver the said propeller at any time before the said day, the said term shall take date from the time of delivery. For the use of said propeller, said Robert Owen agrees to pay the said Smith Davis six thousand dollars, as follows: On the first of September, October and November, each, two thousand dollars. It is further understood that the said Robert Owen shall be at all the expense of manning and furnishing said boat for the time above stated and shall return the same to the said Smith Davis at the port of Chicago in as good condition as it now is, with the exception of the ordinary use and wear; and if the said Robert Owen shall at any time refuse to fulfill on his part, the said Smith Davis shall have the right to take possession of the said boat wherever the same may be found.*

In Witness Whereof, *we have this day set our hands and seals.*

*Smith Davis,
Robert Owen.*

STOPPAGE IN TRANSITU.

365. Stoppage in Transitu.—This is a peculiar right, similar in its nature to the right of lien, which is given to the vendor of goods which have been sold and sent to a purchaser at a distance, and, after the goods are sent, he finds that the buyer has become insolvent; it enables him to stop the goods any time before they get into the possession of the purchaser. This is called the right of stoppage *in transitu*. It depends upon conditions which must occur to give it effect. It is the right which the law gives, under certain circumstances, to retake possession of goods which have gone out of the possession of the vendor. It is an *extension* of the right of *lien*, as it were. If the goods still remained in possession of the vendor, the right of *lien* could be exercised, but, having gone out of the vendor's hands, but not having reached the hands of the vendee, the seller has the right to *stop* the goods and hold them for security.

366. Necessary Conditions.—To give the vendor this right, the law requires that the following conditions shall subsist, namely: *First*, the insolvency of the purchaser; *Second*, the goods must be in the hands of a common carrier, in transit, in conveyance from the vendor to the vendee; and, *Third*, the purchase price of the goods must remain unpaid. This right is derived from the credit system of doing business, and exists only between the vendor and the vendee. A person who has guaranteed the payment for the goods has no right of stoppage.

367. The Vendor.—The general rule is that the vendor is the only person who can exercise this right, but it is only necessary that he should be substantially the vendor; he may be the immediate but not the ultimate vendor. As where A. receives an order for goods, and, not having them, buys them of another

person on his own account and ships them to the person who ordered them, he has a right to stop the goods *in transitu*. So when a person sends goods to be sold on joint account of himself and the consignee, he has the right of stoppage. But when money or goods are sent to pay a debt they cannot be stopped.

368. The Insolvency.—One of the necessary conditions to the existence of this right is the insolvency of the vendee, but it need not be a complete bankruptcy or formal insolvency; it is only necessary that there should be an inability to pay his debts. A well founded report that he cannot pay his debts, or the fact of his acceptances being dishonored, is generally sufficient cause for exercising the right of stoppage. But the contract is not entirely broken up if the vendor does exercise the right of stoppage; the vendee has the right to reclaim the goods by paying the price, or tendering payment. So, also, if the agreement was to sell the goods on credit without security, and there is good cause for the stoppage, the vendor may demand either payment or good security. The act of stopping the goods is always exercised on the vendor's own responsibility, and, if it is done wrongfully, the vendee can reclaim the goods and make the vendor pay for all the damages he sustains resulting from the stoppage.

369. Goods in Transit.—Another of the necessary conditions to the right is, that the property about which it is to be exercised must be *in transit*, and in the hands of a *common carrier*. If the goods have been delivered to the vendee, or are in the hands of his agent, there can be no stoppage. The following kinds of delivery have been held to be sufficient to destroy the right of stoppage, viz.: "A delivery of the key to the vendor's warehouse to the purchaser; paying the vendor's rent for the goods left in his warehouse; delivering to the vendee a bill of parcels, with an order on the storekeeper for the delivery of the goods; demanding and marking the goods by the agent of the vendee, at the inn where they had arrived, at the end of the journey." In every instance where the goods come into the hands of the vendee the right is destroyed.

370. Transit Terminated.—The transit, so far as this right is concerned, is terminated as soon as the goods come into the possession of the vendee or his agent. But it need not necessarily be an *actual* possession. A *constructive* possession is sometimes deemed sufficient, as being placed on the wharf and notice being sent thereof to the vendee, or being delivered to an agent of the vendee, who is to re-ship to another party. The transit is always ended when the goods have reached the place of delivery and the vendee has exercised some act of ownership over them. But if the goods go into a general warehouse at the place of delivery, and the vendee has not done any such act, the vendor's right still remains good. It is held that the vendee may meet the goods while in transit, and take possession of them, and thus terminate the right of stoppage.

371. Stoppage by Notice.—Although this right is one which gives the vendor the privilege of overtaking the goods and stopping them; yet he need not do the act himself. It may be done by his agent, and it may also be done by a friend who is not his agent at the time. He can make the stoppage good by ratifying the friend's act before the transit is terminated, but he could not after it was ended. So, also, the stoppage can be made, by giving notice to the common carrier in whose possession they are to hold the goods, and then claim them of him.

372. Effect of Stoppage.—The sale is not rescinded by the stoppage. The vendor holds the goods as the property of the vendee, and the vendee has the right to redeem the goods by paying the price. The exercise of the right of stoppage by the vendor places the parties back where they were at the time the vendor parted with the goods, and restores his right of lien, and he may then sue for the price if the goods are ready for delivery on payment being made.

A G E N C Y .

373. An Agency.—An agency is the result of a contract, either express or implied, whereby one person is authorized to act in the place of another in some matter of business. The magnitude of business carried on by individuals renders it imperative to substitute others to do much of the work which is done in the name of the principal. The general rule is, that anything a person can rightfully and legally do himself, he has a right to appoint an agent to do in his stead. The contract between the principal and agent, whether express or implied, is in the nature of a trust, in which the principal confides to the agent the management or performance of some business transaction to be done on account of, or in the name of the principal. The act of the agent, when legally authorized, is the same as if done by the principal.

374. How Created.—The contract which creates the agency may be a formal writing under seal, as a power of attorney, or it may be a written agreement, or a letter of instructions, or a verbal agreement or appointment, or it may be implied from facts and circumstances. The conveyance of land and other contracts required to be under seal, can only be made by an agent whose appointment is established by a sealed instrument. For ordinary contracts a written or verbal agreement or appointment is all that is required.

375. The Principal.—Generally the principal may appoint any person as agent who is capable of transacting the agency business intelligently. Persons who cannot do business for themselves on account of legal restrictions, as married women, and infants, may be appointed as agents. The reason of this is, that the act, when done, is in law that of the principal, and is not affected by the disability of the agent. But a

principal cannot delegate authority to an agent to do an unlawful act. And where the thing to be done is of the character of a personal trust, which is confided to him on account of his ability and integrity, as an executor or attorney, he cannot delegate it to another.

376. The Agent.—The agent may receive his authority by a formal appointment, or he may be constituted such by his acts. If a principal willingly allows a person to do acts in his name, of which he is cognizant, he will be presumed to have given him authority. As where he allow him to sell his property without objection, he will be bound by the sale. But where the act to be done for the principal must be done under seal, an implied authority will not suffice; the appointment must be under seal. A verbal appointment is sufficient authority for signing an unsealed paper. Where an agent is appointed by a corporation the general rule is the same.

377. Several Principals.—Where there are several principals not jointly interested, but who are tenants in common, the rule is, that no one of them has authority to appoint an agent for all, unless by the consent of all; but, in case of a partnership, one partner can appoint an agent for all.

378. Several Agents.—Where several persons are appointed by law as agents the thing to be done may generally be executed by a majority of them. And where goods have been consigned to two factors to be sold, either one has a right to sell without the consent of the other. So, also, where a partnership is appointed as agents either partner has a right to act in the firm-name.

379. Extent of the Agent's Authority.—The extent of the agent's authority, to bind the principal, is to be gathered from the appointment, and depends upon the power which has been impliedly or expressly vested in him. If he exceed the power given him, the principal will not, in general, be bound, unless he has so treated him as to imply that he is a general agent. If, therefore, the agent go beyond his authority, and do an act outside of his proper agency, the principal will not be

bound. Authority may sometimes be implied from previous acts of the agent which have been sanctioned by the principal, and which were of a similar nature. So, if an act be done without authority, and the principal, with knowledge of the fact, adopt it, by taking the benefit of it, he will be bound, and, in some instances, an adoption may result from remaining silent, as where an agency really exists from some general relations, and the agent notifies the principal of some act done for him, it devolves upon the principal to express his dissent, or he will be bound by the agent's acts.

380. Kinds of Agency.—There are several kinds of agency, the first division of which is into *special* and *general*; second, *limited* and *unlimited*; third, *factor* and *broker*.

381. A Special Agency.—A special agency is an agency to do a single act. But to limit the authority to a particular business does not make it a special agency; because it may be as general in relation to that particular business as if it were unlimited in extent. Every person dealing with a special agent must ascertain what the extent of his authority is, and at his own risk.

382. General Agency.—A general agency consists of delegated authority to do anything about a particular business. The rule here is, that the principal is bound for all acts of the agent that come within the *scope* of the business, or general authority vested in him. If an agent is appointed to sell goods, and instructed not to warrant them, but he nevertheless warrants them, the principal will not be bound by the warranty. But, if a person is authorized to sell and warrant, and warrants in a particular case in opposition to private instructions, the principal will be bound by the warranty.

383. Limited Agency.—This division of agency is one in which the agent is bound by particular instructions, and applies to a general agent, restricting and limiting his authority.

384. Unlimited Agency.—An unlimited agency is applicable to a special agent, giving him authority to use any means he may find necessary to accomplish the thing to be done.

385. A Factor.—The commercial division of agency is that of *factor* and *broker*. The *factor* is one who has the property of his principal in his own possession for sale. He is commonly called a commission merchant, and the goods received from the principal for sale are called a *consignment*. If the agent accompany the cargo on a voyage, he is called a *supercargo*. A factor has the goods in his own possession, and may buy and sell goods in his own name without disclosing the name of his principal. The factor has a special property in the goods or subject-matter of sale. The rule is, that a factor is always entitled to his commissions if he has properly performed his duty. But it is a question not well settled whether he can recover his commissions if the purchaser fails. This will depend much upon the usage and custom in the place where he is doing business.

386. A Broker.—A broker is one who is employed to negotiate sales between the buyer and the seller. He gets his pay for doing the business generally by charging so much per cent. on the value of the property negotiated, and it is called a commission or brokerage. He acts as a middle-man between the buyer and seller, and undertakes to bring about the exchanges of property, and, accordingly, as he makes a specialty of one kind of business or another, he is called a real estate broker, an exchange broker, a stock broker, etc. He does not have possession of the goods or property which he negotiates, nor has he any authority to sell in his own name. Sometimes, however, the same person is both factor and broker.

387. Rules of Construction.—Formal written instruments are usually strictly construed, and are to be so interpreted as not to exceed the authority given, or what is absolutely necessary to accomplish the object of the agency. Thus, a power to sell land does not confer authority to lease it, or to give permission to cut timber on the land, even though it should be done with a view of inducing a party to buy. But, if an agent is employed to get a bill discounted, which is payable to the order of his principal, he may indorse the principal's name on the back, and the principal will be bound by such indorsement. Authority delegated by a written instrument is restricted

to such acts as are plainly incident to the main object to be secured. An auctioneer, as such, has no authority to bind the owner of goods which he sells by a guaranty. When the language by which the authority was given is susceptible of different meaning by which the agent was misled, and adopted a course not designed by the principal, yet he will be bound, because he occasioned the mistake.

388. What Strangers are Governed By.—Strangers who deal with a special agent are under obligations to ascertain just what authority has been vested in the agent, and what is the extent of his agency. The mere fact of his being a special agent shows that his agency is limited, and is sufficient notice to put those who deal with him on their guard. But in a general agency it is different. Here third persons have a right to be governed by the acts of the parties, and not by any private understanding, or arrangement, between the principal and agent. Whatever authority is conferred upon a general agent by the public declarations or acts of the principal he will be bound by, so far as strangers are governed in their dealings with the agent, by those declarations and acts. The authority which is delegated to the agent by the principal is largely influenced and sometimes superseded by that which he allows him to assume. But the principal is only bound by such representations in regard to the subject-matter as the agent makes in his character *as agent*. Thus his statements as to the quality of goods, when he is selling, will be binding upon the principal, but if made at any other time when not engaged in the agency business, they would not be binding.

389. Specific Instructions.—When the agent receives specific instructions from the principal, he must faithfully comply if they are not unlawful, except when some unforeseen circumstance arises which would change the intentions of the principal, or render it impossible. The rule is, that every loss which is the result of non-compliance with the principal's orders, must be borne by the agent; but, if there be any profit, it belongs to the principal. A slight and unimportant deviation from the instructions will not make the agent liable if the prin-

cial object is attained. For instance, if an agent is instructed to buy goods at a limited price, and he should pay more, but save enough on freight to make it up, he would be excused. But where no particular instructions are given, the agent must conform to the usage of trade, or the custom of the place, with reference to his particular agency. And where a consignee is instructed to sell goods, he has a right to sell on credit if that is the general custom of the place. But if he is authorized to sell, he has no right to barter the goods off nor to pledge them.

390. Accounts and Vouchers.—The agent is bound to keep correct accounts and vouchers of all transactions relating to the agency business, and if through his neglect to do so there should be any loss or damage, he will be liable to the principal. And, if his accounts are not kept correctly so as to form a proper basis upon which to reckon, he will not be entitled to any commission. Whatever profit is made by an agent in the course of his agency business belongs to the principal, whether it is a direct profit or only incidental; and no agent has a right to appropriate to his own use any share of the profit, even if it is incidental, as the interest on the principal's capital, notwithstanding it should seem to be justified by usage. The law looks upon such usage as a usage of fraud.

391. Separate Property.—The agent must keep the property intrusted to him by the principal entirely separate from his own. If he carelessly mix his own property with that of the principal the law will consider it all the property of the principal. So, all money belonging to the agency should be deposited in the name of the principal, and if the agent deposit it in his own name, without anything to distinguish it from his own, and the bank should fail, the agent would be liable for the loss.

392. Authority to Receive Money.—A person can safely pay money to an agent when the principal has authorized him to do so. But the authority of an agent to receive money due to the principal on a written instrument ought to be accompanied by the instrument, so that the payment may be indorsed,

or, if it be in full, the instrument be given up. Where goods have been purchased of a factor the purchaser has a right to pay him, unless the principal notifies the buyer not to pay the agent. The general rule is, that a broker, by reason of not having the goods in possession which he sells, is not authorized to receive money. But where the principal is not known, he may bind by receiving payment, because he then takes the place of the principal. So, also, custom and usage will sometimes justify a person in paying a broker. And where an agent is authorized to receive money, a *tender* to him is the same as if made to the principal.

393. Del Credere Commissions.—When it is the custom to sell goods on credit, the factor sometimes guarantees the sale, provided the principal agree to allow him a larger percentage of commission than is usual. He is then said to receive a *del credere* commission. In case the purchaser does not pay, the agent then becomes personally liable.

394. Violation of Duty.—If losses occur in consequence of violation of duty by negligence or misconduct, the agent will be liable to his principal; as where an agent knowingly deposits goods in an improper place, and they are destroyed by fire, he would be liable for the loss. So, if an agent neglect to procure insurance when he is instructed by his principal to insure, or when it is the custom of the place to insure, he will be held liable. But where a person receives an order to buy twenty-five shares of New-York Central Railroad stock, and he goes into the market and finds only ten shares for sale, which he buys, and then is unable to buy any more, the principal will be bound for the purchase of the ten shares, because it was the best the agent could do under the circumstances.

395. Duties of Agent.—Every agent is presumed to possess a reasonable amount of skill, and is bound to exercise ordinary diligence about the trust he is to perform. The skill required is such as persons of an average capacity bring into requisition in their own matters of business. Ordinary diligence is that which persons of common prudence use in their own

affairs. An agent is not only bound to obey the specific instructions of his principal, but he is also bound to obey incidental orders when he has undertaken to perform duties out of which the incidental orders naturally come. As where the agent receives a consignment of goods, with instructions to sell, and nothing is said about insurance. If it is the custom to insure it is his duty to secure insurance; or if he sells goods for the principal, and takes notes in payment, he must present the notes for payment on the day of maturity, and, if not paid, must have them properly protested, and notices sent, or he will be personally liable. The consignor of goods generally has the power to control the sales, except when the consignee has advanced money, or incurred liability, on account of the consignment, in which case he may control it until he is reimbursed. But the consignor can in such case again secure control, by offering to pay the charges.

396. Liability of Agent.—An agent is sometimes liable for a larger sum than the amount of money advanced by his principal, and the interest thereon. If he receive an order, with money, from his principal, directing him to purchase a particular kind of goods, and he wilfully convert the money to his own use, and the goods rapidly increase in value, he is liable for the increased value, as well as the principal and interest. He is also liable for losses sustained by reason of his neglect or want of due diligence in the execution of his trust. So, also, he is liable to the principal for any damages which he has had to pay to third persons for injury to their property, caused by the act of the agent while in the performance of the agency business. But where an agent is expressly directed to do an act, and its performance would not result in any legal benefit to the principal, there will be no liability if he neglect it. There will be no liability when there arises an unforeseen necessity, which was not expected by the parties, nor where a strict compliance has become impossible by reason of peculiar circumstances; or if the subject-matter of his agency be founded in illegality or fraud, or contravene the principles of public policy. In any case there must be both an injury and a wrong in order to sustain an action.

397. An Adverse Party.—The law does not permit an agent to defeat a trust that he has accepted, by becoming an adverse party to his principal. If he is appointed to sell goods, he cannot buy the same goods, either for himself or for a third person. The agent cannot do his full duty to the principal when he is engaged in transactions which conflict with the interests of the principal.

398. Agent, a Bailee.—An agent who has property belonging to his principal in his possession, occupies the position of a bailee for hire, and must take as much care of the goods as a person of common prudence would take of his own property. If he is guilty of neglect he will be liable to the principal. Where loss is sustained by the principal in consequence of neglect to notify him of material facts of interest to him, the agent will be responsible.

399. When Account for Price.—Generally an agent is not under obligation to account for the price of goods he has sold until he has received the money from the purchaser. But there are a few exceptions to this rule; first, where he has improperly sold the goods on credit, or where he has given a longer credit than his instructions or custom warranted; second, where his own neglect was the cause of the payment being delayed.

400. Personal Liability.—An agent generally avoids personal liability when he makes the contract in the name of the principal and under his authority; but there are some exceptions: first, he makes himself liable if the principal is not known; second, if there is no responsible principal, except public agents who are known to contract for the government, and are not, therefore, liable; third, when the contract is made expressly his own; and, fourth, where he exceeds his authority. An agent is always liable when he binds himself by a formal engagement. And so, also, if the principal is not bound by reason of the agent's exceeding his authority, he himself will be bound. An agent is liable to his principal only, for neglect or non-performance of duty, and not to third persons. He is,

however, liable to third persons for wrongful acts, and it makes no difference whether the principal authorizes him to do the act or not, because he is not obliged to do an unlawful or wrongful act. If an agent refuses to deliver goods to a rightful owner, he will not be liable for conversion of the property, provided he truly places the refusal upon the ground that he has no authority to do so from his principal.

401. Rights of the Agent.—An agent is an employee, or bailee, who works for hire, and he is entitled to his wages when his trust is faithfully performed. His principal right, therefore, is to receive his wages by way of commission, the amount of which may be determined by agreement between the parties, or by custom of the place, or by a jury. To secure the payment of the commission, the agent is given the right of lien on the property in his possession, and also the right to insure the property for his own benefit.

An agent is also entitled to be re-imbursed for costs and damages, which, without fault of his, he has been obliged to pay in relation to the agency.

402. Rights of Principals.—The principal being bound by the contracts and acts of the agent, when done within the scope of the agency, has reciprocal rights against third persons, corresponding with his own liabilities. The principal may, therefore, sue third persons, when they are responsible, on their contracts made within the agency business.

403. Liability of Principal.—The principal is liable to third persons for the negligence or unskilfulness of the agent when he is acting in fulfillment of the agency business, even if he is not under his immediate direction. But to hold the principal responsible for the act of the agent, it must be shown that it was done during the performance of the agency business, and not while he was about his own business. So, also, if the agent wilfully occasion damage to the property of a third person, the principal is not liable.

404. Wrong Expressly Commanded.—If the principal expressly commands a wrong to be done, or gives orders which

cannot be carried out without perpetrating a wrong upon third persons, he will be held liable. The general principle is, that for all torts, frauds, misfeasances and defaults of the agent, done in the regular course of the agency business, the principal is liable, whether he participated in it or not, provided it were not a wilful act of the agent. The agent is liable equally with the principal for all wrongs done by him by command of his principal.

405. Sub-Agents.—The agent has no power to appoint sub-agents, or to delegate his own powers, unless expressly authorized by the principal, or unless the nature and usages of the business require or justify it. Sometimes, where a business is vast or greatly extended, an agent is appointed, with power to create sub-agents in various places, and for various purposes, and with various powers.

406. Representations of Agents.—The principal is liable for representations made by his agent, provided they are connected with and accompany the act, and are used as explaining or qualifying it, and provided, also, the act itself comes within the agency business.

407. Notice to Agent.—A notice to an agent is generally considered notice to the principal, but to have that effect it must have relation to the agency business, and come within its scope. It must also be at the time he is acting as agent in relation to the very thing about which the notice is given. When notice is given to the cashier of a bank in his official capacity, it is considered notice to the bank. And if knowledge is acquired by an agent in the course of his business, it operates the same as if it were the knowledge of his principal.

The rule as to the sufficiency of notice is: "That whatever is notice enough to excite attention and put the party upon his guard, and call for inquiry, is notice of everything to which such inquiry might have led. That when a person has sufficient information to lead him to a fact, he shall be deemed conversant of it."

408. Purchases Made by Agent.—The principal's liability may be affected in several ways by purchases made by his

agent: *First*, when the goods are bought expressly in the principal's name, he only is liable; *second*, the person selling the goods, and knowing the principal, may prefer to trust the agent, and having elected to do so, he cannot afterwards charge the principal; *third*, where an agent buys without disclosing his principal, the seller may resort to either. If an agent represent himself as principal when buying goods, the vendor, not knowing that he is acting as agent, will have the same rights against him as if he were principal.

409. Delivery to an Agent.—When the vendor delivers goods to the general agent of the principal for whom they were purchased, the title of the property passes from the vendor to the principal, and cuts off the right of *stoppage in transitu*. But if the goods are delivered to a common carrier to be conveyed to the principal, the right of stoppage is not generally destroyed.

410. Money Paid by Agent.—The money paid by the agent can be recovered back by the principal if it has been paid by mistake, or if the consideration has failed, or if the money was illegally extorted from him as agent, or if it was fraudulently applied to some illegal purpose for which the agent had no right to use it.

411. Dissolution of Agency.—There are *three* ways in which an agency may be dissolved: *First*, by a *revocation* of the power of the agent by the principal; *second*, by a *renunciation* of power by the agent; *third*, by *operation of law*.

412. Revocation.—If the principal's authority has not been executed in any part, he may revoke it at any time, provided it will work no injury to the agent. But if the authority be given for a valuable consideration, or if an interest be coupled with it, or if it form part of a security, it cannot be revoked unless there is an express agreement that it shall be revocable. But if the agency has already begun and cannot be separated into parts without injury to the agent, the principal cannot revoke his authority without making himself liable to indemnify the agent for all loss he will sustain.

413. How Done.—The principal may revoke his authority by a public and formal declaration, or by a written or verbal announcement to the agent, or it may be implied from the acts of the principal, as where he puts hindrances in the way of the agent to prevent his performance, or where he appoints another to do the very acts which were to be done. So far as the agent is concerned, the revocation takes effect from the time he receives notice thereof.

414. Renunciation.—The agent can renounce the authority of the principal at any time, but not without making himself liable to the principal for all the damages and losses he sustains in consequence of the renunciation, except where it is a gratuitous and purely voluntary agency.

415. Operation of Law.—An agency may be terminated by operation of law: *First*, by lapse of time, as where it was created for a year and the year expires; *second*, by change in the condition of either party, producing incapacity to act, such as insanity, or bankruptcy, or the death of either party, or by an extinction of the business concerning which the agency was established. Where the authority is terminated by the death of the principal, all the acts of the agent are generally void which are done after the death, even if they are done in good faith and in ignorance of the event. To this rule there is an exception where the authority is coupled with an interest, in which case it may be continued in the name of the agent.

416. Written Contract by Agent.—When a written contract is made by an agent for his principal, who is known, it should be stated in the body of the contract sufficiently clear to signify that it is his, and should be signed with the name of the principal, and not with the agent's name alone. If an agent is directed to get a note discounted at the bank which is payable to his principal or order, he has implied authority to indorse it in the principal's name, and should sign his own name under as agent. A person may bind himself by any mark that he may see fit to adopt as a substitute for his name, if he does it with the intention of being bound.

FORM No. 69.

417. Power of Attorney.

Know all Men by these Presents, That (I, John Jones, of the City of New-York and State of New-York) have made, constituted and appointed, and by **THESE PRESENTS** do make, constitute and appoint (William H. Prentice, of the same place, my) true and lawful attorney for (me) and in (my) name, place and stead to (ask, demand, sue for, collect and give acquittance for all sums of money, debts and demands whatsoever, which are or shall be due, owing or belonging to me, to exercise the general control and supervision over all my lands, tenements and hereditaments in the City of Chicago or State of Illinois or elsewhere. With power to rent, lease, collect rents, keep up insurance, pay moneys and collect moneys for me.

To grant, bargain and sell any real estate owned by me for such price and on such terms as to him shall seem meet, and for me and in my name to make, execute and acknowledge good and sufficient deeds and conveyances for the same,) giving and granting unto (my) said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as (I) might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that (my) said attorney or (his) substitute shall lawfully do or cause to be done by virtue thereof.

In Witness Whereof, (I) have hereunto set my hand and seal, the (twenty-fifth) day of (September) one thousand eight hundred and (eighty-three).

Scaled and Delivered in the Presence of

United States of America, }
STATE OF NEW-YORK, } ss.
CITY OF NEW-YORK.

John Jones.

BE IT KNOWN, That on the (twenty-fifth) day of (September) one thousand eight hundred and eighty-three) before me personally appeared (John Jones) above named, who (is) to me personally known to be the person described in and who executed the above Letter of Attorney, and acknowledged the same to be (his) free act and deed

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, the day and year last above written.

C. W. Field.

[In the printed Forms the words enclosed in parenthesis would be written.]

FORM NO. 70.

418. Agreement to Sell Manufactory, Stock and Good-Will.

This Agreement, made the 5th day of September, 1882, between Roswell Goodman, of Chicago, Ill., and Duncan Bell of the same city, witnesseth: That the said Roswell Goodman, for the consideration hereinafter specified, agrees to sell to the said Duncan Bell, and the said Duncan Bell agrees to buy of the said Roswell Goodman, all the machinery and appurtenances whatsoever belonging thereto, and all the stock of furniture and lumber on hand whether manufactured or in course of construction, and all material of whatsoever kind and nature used or to be used in or about said manufactory, now occupied by the said Roswell Goodman, on the corner of Indiana and Randolph Streets, and also the good-will of the business heretofore carried on there, by the said Roswell Goodman.

IN CONSIDERATION THEREOF, the said Duncan Bell agrees to pay to the said Roswell Goodman twenty-five thousand dollars on the first day of October, 1882, and give his note for twenty-five thousand dollars, payable one year after date, the said note to be indorsed by Geo. C. Wells, and to be further secured by a chattel mortgage on all the machinery contained in and used about said manufactory. And the said Roswell Goodman further covenants and agrees to and with the said Duncan Bell that he will not at any time hereafter engage directly or indirectly or concern himself in carrying on or conducting the business of manufacturing furniture, either as principal, agent or servant, within one hundred miles of the City of Chicago. And it is expressly understood and agreed to, that the stipulations aforesaid are to apply to, and to bind the heirs, executors and administrators of the respective parties; and in case of failure the parties bind themselves each unto the other in the sum of ten thousand dollars as liquidated damages to be paid by the failing party.

IN WITNESS WHEREOF, we have this tenth day of August, 1882, affixed our hands and seals.

Roswell Goodman,
Duncan Bell.

By Charles Norton, Attorney.

PARTNERSHIP.

419. A Partnership.—A partnership is generally defined to be the result of a voluntary contract between two or more competent persons to unite their money, effects, labor, or skill, or some, or all of them, in some lawful business, with the understanding that there shall be a community of profits. It is not essential that all the partners furnish capital; one may furnish all the capital, and others the labor, or skill, or *vice versa*.

The important powers conferred upon the individual partners by the execution of the partnership contract, makes it necessary to inquire into the essential elements which constitute such a contract.

420. Community of Profit.—This is considered an essential element of the contract of partnership. The idea of profit must enter into the contract or there can be no partnership. Where parties contribute each a certain sum to make a joint purchase, and the goods are afterwards to be divided between them in the same proportion, it does not constitute a partnership. In order to make it a partnership there must be a sale of the goods, and a distribution of the proceeds. If, in a pretended contract of partnership, it should be agreed that one of the parties should have all the profit, it is not a partnership. It is not essential that the partners should share the profits equally; they may share in any proportion they may agree upon. So, also, they may agree to share the profits, and if there be no profit, but a loss, that the loss shall be divided between two or more, or shall be borne entirely by one. But community of profit generally implies also community of losses, in a limited sense.

421. Partners as to Third Persons.—There are instances where the parties are held to be partners, as to third persons, when they are not really partners as between themselves. This may occur, 1st, where there is no community of capital, but the parties agree to share in the profit or loss of the adventure, or business, as principals, in some proportion agreed upon; 2d, where there is no capital invested, but they agree to contribute their industry, labor and skill, and share the profits and losses, in some fixed proportion, as principals; 3d, where a person is not a partner at all, but holds himself out as a partner, to a third person, who gives him credit, as, for instance, an agent who is authorized to buy goods for a firm, on credit, and represents himself as being a partner in the firm. In each of these instances the parties will be liable to the third parties as partners.

422. Profits as Principal.—It is not only necessary for the parties to share the profits simply, to constitute them partners, but they must share them as *principals*, and not as *agents*. It is sufficient if they share in the profits as profits, that is, after the losses have been deducted from the gross profits. But the amount of profit or of loss that each shall share may vary in any degree which the partners may agree upon. The reason of this is that the experience, labor and skill of the partners may vary to any extent, and therefore justly entitle one to a much larger share than another. If one receive out of the profits a certain share, merely as a compensation for his services, he is not a partner.

423. Mutual Assent.—As a partnership is the result of a voluntary contract between the parties, it follows that there can be no partnership without the mutual assent of all the partners. It is governed by principles of natural law and justice, and should be established in good faith, by the mutual consent of all the parties.

424. How Formed.—The common law does not require any particular forms to constitute a partnership. It is a simple contract, formed by the voluntary consent of the parties, and

may be either *express* or *implied*. It may be by *written* articles of agreement, signed by the parties, or by a *verbal* agreement, or by the *acts* of the parties.

425. Written Articles.—The responsibilities assumed by the formation of a partnership, and the liabilities incurred by the acts of co-partners, should prompt every business man to put this contract in writing. When written articles are made, every possible provision and stipulation which will be likely to prevent misunderstanding, or disagreement, should be inserted. When the contract is in writing, the presumption of the law is that *all* the provisions and stipulations are included in the writing, and, therefore, any verbal agreement in connection therewith, between the parties, will be excluded. But, whether the contract be in writing, or verbal, the *acts* of the partners, although contrary to the written provisions, if sanctioned by the co-partners, will govern instead of the writing. The *acts* of parties are of such importance that a person may make himself liable as a partner by representing to a third person that he is, and inducing him to act upon such representation.

426. Verbal Agreement.—As every contract is founded upon the mutual agreement of the parties, it may either be formally made in words, or may be committed to writing. When it is formal, and either stated verbally or in writing, it is said to be an *express* contract. The only important difference between a written or parol contract is in regard to the mode of proving it. A partnership formed by verbal agreement is as binding as if it were in writing.

427. Implied Agreement.—The acts of the parties may be such that the law will raise an implied contract, and establish a partnership. If the parties, without any express agreement, buy and sell goods, and divide the profits, or, if each contribute labor, and services, and materials in the manufacture of any articles of trade, and the articles are distributed between them, they will be considered partners.

428. Objects of Partnership.—The primary object to be secured in the formation of partnerships, is to combine capital,

or labor, or skill, or two or more of them, in order to carry on larger enterprises and produce better results than could be secured separately. It may be for mechanical, commercial, or professional business, or for any other which is lawful. It may be limited to a single adventure, or it may embrace the most extensive operations.

429. Joint Stock Companies.—A joint stock company is a corporation organized under a general or special act of the Legislature for the purpose of promoting personal or public interests. The objects to be secured by these companies are similar to those of a simple partnership, and both come under the same general principles. They are based upon the idea of combining the means of a larger number of persons than are usually found in ordinary partnerships with a view to securing more capital to carry on the projected enterprise.

430. Statute of New-York.—The statute of the State of New-York provides that, "Whenever five or more persons, a majority of whom shall be citizens and residents of this State, shall propose to form a corporation under the provisions of this act, they shall make a certificate to that effect, which certificate shall be signed by each of such persons and duly acknowledged by them before some officer authorized to take acknowledgments under the laws of this State. Such certificate shall set forth:

"*First.*—The name of the proposed corporation.

"*Second.*—The object for which it is to be formed, including the nature and locality of its business.

"*Third.*—The amount and description of the capital stock.

"*Fourth.*—The number of shares of which the capital stock shall consist.

"*Fifth.*—The location of the principal business office.

"*Sixth.*—The duration of the corporation, which, however, shall not exceed fifty years."

431. License by Secretary of State.—"Such certificate shall be filed in the office of the Secretary of State; and the

Secretary of State shall thereupon issue a license to the persons making such certificate, empowering them as commissioners to open books for subscription to the capital stock of such corporation at such times and places as they may determine; but no license shall be issued in the case of a proposed corporation having the same name as an existing corporation in this State, or a name so nearly resembling that of an existing corporation as to be calculated to deceive." Nearly all banking, insurance, mining, railroading, and express business is carried on by corporations, very generally called joint stock companies. The management of such companies is generally vested in a board of directors, who elect from their number a president and other necessary officers. The liability of each member begins with the commencement of the company.

432. Limited Partnerships.—Legislation in most of the States has authorized the formation of *limited* partnerships. This name signifies that one or more of the partners of a firm is limited in his liability to third persons on account of the partnership debts to the amount which he contributes to the capital invested. Only a part of the partners in any firm can be *limited* in this sense, as there must be some who are general partners, and whose individual property is liable for the debts of the firm. The statute, in consideration of granting these privileges, requires that certain provisions shall be strictly and literally complied with. The name of the limited partner is not to appear in the firm, nor is he to transact any business on account of the firm. A written certificate signed by the parties, stating the terms of the partnership, must be recorded, and it must also be published in the newspapers.

433. Kinds of Partners.—Partners are usually said to be of three kinds: 1st, *ostensible* partners; these are the real partners, whose names appear before the public, and who manage the business, and who are in reality what they appear to be; 2d, *nominal* partners; persons whose names are used in connection with the business, and are held out to the public as partners, but who are not, and have no real interest in the business. They lend their names to the actual partners, and become liable with

them to the public; 3d, *dormant* partners; persons whose names do not appear to the public, and who do not desire to be known as partners, but who have a real interest in the business, and intend to share in the profits without being liable for the debts. There are also *limited* partners, who avoid liability to the creditors beyond the limit of the amount of capital they pay into the firm, by complying with the provisions of the statute of the State where such a partnership is formed.

434. Who may be Partners.—The common law rule is that any person of sound mind, if not otherwise restricted, may be a partner. *Infants*—or persons under legal age—are not restrained by common law from entering into partnership, since it may be beneficial to their interest to do so. Infants, however, cannot be held to the partnership contracts if they choose to avoid them. When a person under age becomes a partner, he must give notice within a reasonable time after he becomes of age that he disaffirms the contract, or by his acts if he continues he will be deemed to have affirmed the contract.

435. Aliens.—Aliens are not disabled from doing business, and may enter into partnership if they are alien friends. But in time of war, alien enemies are disqualified for entering into partnership with each other.

436. Married Women.—Married women are by common law disqualified from forming a partnership, yet by statute in some of the States the common law has been changed, and women may make contracts which relate to the business they may be carrying on, or such as relate to their own property.

437. Duration of Partnerships.—Partnerships may be formed for a single adventure, for a term of years, for life, or for an indefinite period of time. If no specified time is fixed for its continuance, it is subject to the mutual pleasure of the partners, and may be dissolved at any time by the withdrawal of one of the partners. When a specified time is fixed, it is presumed to run until the time expires. But the law does not presume that the partnership will continue after the death of

either of the partners. And if it is so intended by the partners, it must be provided for in the articles of agreement.

438. Relations of Partnership.—A partnership when created is like an artificial person, it is a legal entity possessing rights, and subject to liability the same as an individual. It is, as it were, another person, brought into commercial and legal relations with the individual partners, and with the public generally. The partnership agreement generally specifies what the partnership stock shall consist of. It may be only profits, as where A. owns goods, and B. & C. unite their efforts with his in selling the goods, and share in the profits, without having any interest in the goods.

The agreement should always specify the amount of interest each partner has in the capital stock, and also the proportionate share they each shall have of the profits. If the division of profits is not fixed by agreement, the law presumes that each partner is entitled to an equal proportion.

439. Relations of Partners.—Each individual partner has relations with his co-partners, and with the partnership, and also with third persons. In ordinary partnerships each partner has a joint interest in the partnership stock, and each can convey to a third person the title of the whole stock. So, also, may each partner create any amount of indebtedness on account of the partnership, and give notes, or accept drafts, to any amount, in the name of the partnership, for the payment of which not only will the partnership property be liable, but also the individual property of each partner. In general, partners cannot bring an action at law against each other for anything done, or omitted, in the partnership affairs, during the continuance of the partnership. Every person who becomes a partner impliedly promises to do all he can to promote the interests of the business, but if one partner takes all the responsibility, and does all the work, while another neglects his duties, he cannot recover any reward for the extra services, unless there was a previous agreement to that effect.

440. Relations of Third Persons.—Third persons have dealings with both the partners and the partnership. Their

dealings with the partners may be entirely independent of the partnership, so, also, their dealings with the partnership may be quite independent of the partners. Third persons are presumed to know what the partnership business is, and what contracts they have a right to make. If a third person has a claim against one of the partners of a firm, he cannot receive partnership goods in payment of the debt, unless by the consent of all the partners, without making himself liable to the partnership, even if he is ignorant of its being partnership property. But a partner has a right to compound a debt of a third person, and the partnership will be bound. So he may give a debtor time by taking his note, payable in the future for a book account already due, and so preclude the partnership from suing until the *note* is due.

441. Powers of Partners.—We have already seen that each partner may create debts in the name of the partnership to any amount. He is the accredited agent of all the partners, and may enter into any engagements or contracts in the ordinary trade and business of the firm, and on its behalf, such as “buying and selling, or pledging goods, or by paying or receiving, or borrowing moneys, or by drawing, or negotiating, or indorsing, or accepting bills of exchange, and giving promissory notes and checks, and other negotiable securities, or by procuring insurance for the firm, or by doing any other acts, which are incident or appropriate to such trade or business, according to the common course and usages thereof.” Indeed, there is scarcely any limit to the indebtedness which a partner may create against the firm.

442. Mode of Binding.—Ordinarily a partner can only bind the firm by simple contract. He cannot bind the other partners by giving a *deed*, or by contracts under *seal*, unless authority has been expressly given him under seal by the other parties. There is, however, an exception to this rule, which is found in the right which a partner has in legally releasing a partnership debt under seal.

443. In Name of Partnership.—Generally, in order to bind the firm, the contract must be in the firm-name, as well as

for the benefit of the firm. But there are some exceptions to this rule, and if the contract is made in the name of one of the partners, for and in behalf of the firm, and for its benefit, the partnership will be bound. So, also, where drafts drawn upon the firm have been accepted in the name of one partner and paid by the firm, it will be liable for other acceptances of the same nature. But where a contract is made for the benefit and in the name of one of the partners, the partner alone will be liable.

444. On Account of Partnership.—It is not only necessary that the contract be in the *name* of the firm, but it must also be *on account* of the partnership. That is, it must be within the scope of the partnership business. For instance, if a partnership were organized to carry on a dry-goods business, and one of the partners should go outside and purchase grain for speculation without the consent of the other partners, and give notes in the name of the partnership in payment, such notes could not be enforced against the partnership. But if the purchase be of things which might be called for or used in the business at some time, but not at present necessary, the firm would be bound by the contract. It is sometimes difficult to decide just what acts or engagements may be deemed to come within the scope of the business.

445. Good Faith of Third Person.—Not only is it necessary that the contract be made in the name and in behalf of the firm, but the third person, who deals with the partnership, must deal in *good faith*. If he knew the partner had no authority to act for the partnership, or had good reason to suppose he was not authorized, the firm will not be bound by the contract. But where the transaction comes within the scope of the partnership business, and the contract is signed by the partner in the firm-name, and the third party deals in good faith, the partnership will be bound, even though the partner intended to defraud his co-partners.

446. Contract Jointly and Severally Binding.—Each of the partners, as well as all of them, is bound by a contract

of the partnership, although all of them must be united in suing or being sued upon it. Their joint property in the partnership is liable for the firm debt, and so, also, is the separate property of each partner liable to be taken in payment of the debt. And this may bring about a conflict between creditors in case the partnership should become insolvent. In such case the partnership creditor must first look to the partnership property for indemnity before seizing the partner's property. And the partner's creditor looks to the partner's property before he can apply the firm's property.

447. Retiring Partner's Liability.—Every partner is liable for the debts contracted by the firm prior to his retirement. A dormant partner is not liable for partnership debts and contracts made before he retired, provided he is not known as a partner; but if he is known only to a few persons, those few must be notified of his retirement from the firm, or he will still be liable to *them*. An ostensible, or real partner, will be liable to all persons who have dealt with the firm, for all debts and contracts until such persons have notice of his retirement. This results from the principle, "that where one of two innocent persons must suffer from giving a credit, he who has misled the confidence of the other, and has been the cause of the credit, either by his representations, or his negligence, or his fraud, ought to suffer, instead of the other."

And if a real partner retires from the partnership, and leave his name on the sign, he will be liable. The usual notices given on retirement of a partner is to send a special notice to all the parties who have had dealings with the firm, and to insert a notice in one or more newspapers. When a partnership is dissolved by the death of one of the partners, or by operation of law, no notice is required, yet it is customary even then to give notice, and in any case it may be considered a judicious precaution.

448. Dissolution of Partnership.—A partnership may be dissolved: First, by *mutual agreement*; second, by *expiration of time*; third, by *insolvency*; fourth, by *acts of partners*; fifth, by *completion of business*; sixth, by *marriage*; seventh, by *death*; eighth, by *insanity*; ninth, by *decree of court*.

449. By Mutual Consent.—Any partnership, whether it is for a limited period, or at will, may at any time be dissolved by the mutual consent of all the partners. Such a dissolution, as between the parties, and as to third persons who have received notice thereof, will be held in equity perfect and complete.

450. By Expiration of Time.—When a partnership agreement provides that it shall terminate after the expiration of a specified time, it is terminated at that time by the terms of the contract. It cannot be presumed to exist by their consent after the period fixed. If, however, the partners, instead of taking measures to wind up their affairs, continue to carry on the business, the partnership is continued indefinitely under the original agreement.

451. By Insolvency.—The insolvency of one of the partners will produce dissolution, because he is divested of his property, which passes into the hands of an assignee, who has entire control of it; and the assignee is not obliged to become a partner, nor are the partners obliged to admit him as such.

452. By Act of Partner.—It has been held that a partner may renounce the partnership, whether it be for a fixed period, or is a partnership at will, provided he does it in good faith, and for a reasonable cause, and at a reasonable time, and in a reasonable manner.

453. By Completion of Business.—As where two persons should jointly purchase a ship to be employed by them for their mutual profit, as partners, and the ship should be totally lost. Or where two or three persons agree to sell goods on joint account for their mutual benefit and profit, and the goods are all sold and proceeds divided.

454. By Marriage.—At common law the marriage of a female partner will work a dissolution of the partnership, for the reason that the marriage creates a positive personal incapacity on her part to bind herself by any contract.

455. By Death.—The death of one of the partners will work a dissolution of the partnership, no matter how many partners there may be. The reason is said to be that “the personal qualities, diligence, skill, and superintendence of each of the partners are presumed to enter into and constitute a material consideration with all the other partners for engaging in the partnership.” Therefore, the other partners ought not to be bound to continue without a new agreement.

456. By Insanity.—Insanity is not a sufficient cause for a dissolution if it is temporary, or if it be an occasional malady, or accidental illness; but, if it be long continued, and incurable, it will be a sufficient reason.

457. By Decree of Court.—A court of equity may sometimes decree a dissolution on the ground of gross misconduct, or fraud, or violation of duty, of one of the partners. But for trivial neglect, or departure from duty, it will not interfere.

458. Consequences of Dissolution.—Immediately upon the dissolution of the partnership the power of any one of the partners to bind the firm ceases. The relations of the parties as partners are at an end. They are no longer joint tenants in the capital stock, but are tenants in common. One of the consequences of a dissolution is the necessity of promptly closing up the partnership business, and disposing of the effects of the partnership. If the partners are not able to agree upon a division of the effects, then there is no other way but to sell them at a public auction and divide the proceeds, in order to get an equal and just division of the property.

FORM No. 71.

459. Articles of Copartnership.

This Agreement Witnesseth, *That on the 15th day of December A. D., 1882, Joseph Adams, Darwin Coleman, and Henry Sexton, all of the City of Detroit, Michigan, agree to form, and do form, a copartnership for the term of five years, to commence on the first day of January A. D., 1883, for the*

purpose of carrying on the business of manufacturing flour and buying and selling grain and feed, which said business is to be carried on in the City of Detroit, in the mill known as the "Globe Mill," on the following terms and conditions, to the faithful performance of which the said parties do hereby mutually engage and bind themselves: The style and name of the copartnership shall be "The Globe Mill Co." The capital stock of said copartnership shall be one hundred thousand dollars, and shall be contributed by the said parties in the proportion following, viz.: The said Joseph Adams shall contribute the sum of forty thousand dollars, the said Darwin Coleman shall contribute the sum of thirty-three thousand dollars, and the said Henry Sexton shall contribute the sum of twenty-seven thousand dollars, to the said capital stock, to be used, employed and expended in the support and management of said business, to the mutual benefit and advantage of said parties.

The said parties shall do their, and each of their, best endeavors, and shall generally, and at all times, exert themselves for the joint interest, profit, benefit and advantage of the copartnership.

The particular duties of the said parties to the said copartnership business shall be as follows: The said Joseph Adams shall make all the purchases and all sales and have a general supervision of the business of the copartnership; the said Darwin Coleman shall have charge of the office and counting-room of the said copartnership and their books of account, and shall have the custody of the copartnership's money and funds, and shall receive and pay out the partnership moneys and have the general direction and management of the financial transactions of said business; the said Henry Sexton shall have the immediate superintendence, management and direction of the practical operation of said Mill and of the work done by said copartnership. All gains, profits and increase that shall come, grow or arise from or by means of the business of said copartnership shall be divided between the said parties in the proportion which the amount of capital stock contributed by each partner respectively as above specified shall bear to the whole amount of said Capital Stock, and all losses that shall happen to the said business shall be borne and paid by the said copartners in a like proportion.

And it is further agreed, by and between the said parties, that there shall be had and kept at all times, during the continuance of their copartnership, perfect, just and true books of account wherein shall be entered and set down as well all money by said partners or either of them received or expended in and about said business, as also all grain commodities and merchandise bought or sold by them or either of them by reason or on account of said business and all other matters and things whatsoever to the said business, and the management thereof in any wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto without any interruption or hindrance of the other. And also the said copartners once in each year during the continuance of said copartnership (to-wit on the first day of January once in each year), or more often if necessary, shall make, yield and render each to the other a true, just and perfect inventory and account of all the profits and increase by them or either of them made, and of all loss by them or either of them sustained, and also of all payments, receipts and disbursements and of all other things by them made, received, disbursed, acted or suffered in their said copartnership and business, and the same accounts being so made they shall and will clear and adjust, pay and deliver each to the other at the time their just share of the profits so made as aforesaid. And the said parties hereby mutually covenant and agree to and with each other that during the continuance of the said copartnership no chattel mortgage, bill of sale, assignment or other transfer shall be made of their interest or of any part of the interest of either in the property or business of said firm, without the consent of the others.

IN WITNESS WHEREOF, The said parties to these presents have hereunto set their hands and seals this fifteenth day of December, 1882.

*Joseph Adams,
Darwin Coleman,
Henry Sexton.*

AGREEMENTS FOR PERSONAL SERVICES.

460. Services and Wages.—Every employee or servant is the agent of the principal who employs him, and the law relating to principal and agent will generally be applicable to all those cases where personal services are rendered for wages. All agreements to work for a salary or a specified compensation, come under the same general principles, and are, in fact, a hiring of personal services for a compensation. If there be a special agreement that the services shall be given for a specified length of time, at a given price, then the contract must be complied with. But if the hiring be general, without any special agreement as to the time, then it is usually considered to be for one year. And if the servant or employee continue to serve in the same capacity more than a year, without any new agreement, there is an implied contract for another year.

461. Domestic Servants.—In most cases with domestic servants the time is regulated by the custom of paying the wages periodically, as *weekly wages* or *monthly wages*, in which case, if there be no definite understanding about time, it will be only a weekly or monthly hiring, and if the services are continued, it will be a succession of weekly or monthly hirings, and at the end of each week or month, as the case may be, either the employer or the employee may terminate the contract, but it is customary for the party who wishes the contract terminated to give notice to the other party some days or weeks before such termination.

462. Wages or Compensation.—When a person engages or employs the services of another, there is always an express or implied promise to pay for such services. Where there is no agreement as to the amount of compensation to be paid, the rule

is that the employer must pay what it is customary for others to pay for the same kind of services, or what such services are really worth. Generally the wages are not due the employee until the work is completed, or the time for which he was hired is completed, unless there was an agreement to pay in advance, or unless the payment is regulated by well-established custom. Where services are rendered without any agreement as to price, the employer must generally pay what the services are worth, unless there are circumstances which show that the service was to be gratuitous, as where a person does something for a relative.

463. Necessary Skill.—Skill is frequently an important element in the performance of services which are to be rendered. The party who engages to do anything must bring to his undertaking the necessary amount of skill for the employment which he undertakes. If his services are professional, as a surgeon, he must bring to bear “that amount of skill and knowledge, which the leading authorities have pronounced as the result of their researches and experience, up to the time, or within a reasonable time, before the issue or question to be determined.” If a mechanic undertake to make a thing for a particular purpose, and it is not suitable for the purpose, he cannot collect anything for his wages. But it is only ordinary skill that can be required of a domestic servant.

464. Ordinary Care.—Where the labor or service is to be performed about property, the employee is bound to take ordinary care of the property; that is, as much care as a man of common prudence would take of his own property. And if by neglect of such care the property is injured, he will be liable to the employer for damages.

465. Rights and Duties of Employer.—Where the agreement is that the services shall continue for a year, at a stipulated price, the employer is bound to continue his engagement to pay for the full year, and if he discharges the employee before the expiration of the year he will generally be held liable for the wages, and the measure of wages or damages would be

the full amount of salary or wages agreed upon, unless it should be reduced by his proving that the employee had earned, or might have earned, money in the same or some other business. Where there is no agreement as to the amount of wages to be paid, the employer must pay what such services are worth. An employer is not bound to provide medical attendance for an employee in case he is ill.

466. Rights and Duties of Employees.—The employee is bound to perform the service he engaged to do, and if he engaged for a specified time, he is bound to continue the whole time, and if he leave before the expiration of the time he is not entitled to any compensation for the services rendered. If he hire for a month, and leaves at the expiration of three weeks, he is not entitled to any wages for the three weeks. Or, if he engage for a year, with the understanding that the wages are to be paid at the close, without any provision for terminating the contract before the expiration of the year, and leave at the end of eleven months, he will not be entitled to any wages. And so if one work by the job, and undertake to do a certain piece of work for a certain price, he is not entitled to any compensation until the job is completed. But if he undertake a job, and is doing it properly, and is discharged before it is completed, he is entitled to the whole price. The employee is bound to obey all just and reasonable commands of the employer, and to do all his proper work with diligence and care. If he disobey a just and reasonable command, which comes within the scope of his employment, it will be a sufficient reason for his discharge. If the employer refuse to give his permission to the employee's being absent for a time, he will not be justified in leaving, except for some extraordinary circumstance.

467. Lien for Services.—We have already seen under the general subject of lien that a mechanic or other person who does work upon property, which he has in his possession, may hold the property by right of lien to secure payment for such services. Thus, a blacksmith has the right of lien on a horse for his shoeing, and a shoemaker who works up material furnished by his employer into shoes has a lien upon the shoes for his wages.

468. Termination of Services.—Where the hiring is for a definite period of time, either party may terminate the contract when the time expires, without giving any notice to the other. And where the agreement is for a specific time, but before the expiration of the time the contract is dissolved by mutual agreement between the parties, the employee will be entitled to his wages up to the time of such dissolution. If the employer has good reason for discharging the employee, he need not state the reason. But for the convenience, and as a matter of justice to both parties, it is generally better to notify each other of the intent to terminate the contract.

FORM No. 72.

469. Contract for Hiring a Laborer.

This Agreement made this first day of January, 1883, between Patrick Dolan, the party of the first part, and Henry J. Jackson, the party of the second part,

Witnesseth, that the said party of the first part agrees to work faithfully for the said party of the second part as general laborer in and about his store and on and about his farm, at any work he may be called upon to do in connection therewith, in the township of Amherst, County of Lorain, and State of Ohio, for the period of one year from and after the first day of January, 1883, for the sum of Thirty-five Dollars per month. In consideration of the services to be performed, the said Henry J. Jackson, party of the second part, agrees to pay the said Patrick Dolan, party of first part, the sum of Thirty-five Dollars per month, payable as follows: Thirty-five dollars on the first day of February, and Thirty-five Dollars on the first day of each successive following month until the termination of this contract and the full payment thereof is made.

In Witness Whereof, the said parties have hereunto set their hands this first day of January, 1883.

Patrick Dolan,
Henry J. Jackson.

COPYRIGHT.

470. Copyright.—A copyright is the right which is secured by the government to the author, or some other person, to publish and sell a certain book or other work to the exclusion of all other persons. This right is granted for a term of twenty-eight years with the privilege of a renewal at the expiration of that time for an additional fourteen years. The following are the Government regulations under the revised acts of Congress for securing copyrights:

471. Printed Title.—“A *printed* copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or a description of the painting, drawing, chromo, statue, statuary, or model, or design, for a work of the fine arts, for which copyright is desired, must be sent by mail or otherwise, *prepaid*, addressed Librarian of Congress, Washington, D. C. This must be done before publication of the book or other article. The *printed title* required may be a copy of the title-page of such publications as have title-pages. In other cases, the title must be printed expressly for copyright entry. The style of type is immaterial, and the print of the type-writer will be accepted. But *each* title must be printed on paper as large as commercial note.

472. Fees.—“A fee of fifty cents, for recording the title of each book or other article, must be inclosed with the title as above, and fifty cents in addition (or one dollar in all) for each certificate of copyright under seal of the Librarian of Congress, which will be transmitted by early mail.

473. Copy of Books.—“Within ten days after publication of each book or other article, two complete copies of the best edition issued must be sent, to perfect the copyright, with

the address, 'Librarian of Congress, Washington, D. C.' The postage must be prepaid, or else the publications inclosed in parcels covered by printed Penalty Labels, furnished by the Librarian, in which case they will come FREE by mail, according to rulings of the Post-office Department. Without the deposit of copies above required the copyright is void, and a penalty of \$25 is incurred. No copy is required to be deposited elsewhere.

474. Notice of Copyright.—"No copyright is valid unless notice is given by inserting in every copy published, on the title-page or the page following, if it be a book; or, if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model, or design, intended to be perfected as a work of the fine arts, by inscribing upon some portion thereof, or on the substance on which the same is mounted, the following words, viz.: '*Entered according to act of Congress, in the year ———, by ———, in the office of the Librarian of Congress, at Washington,*' or, at the option of the person entering the copyright, the words: '*Copyright, 18—, by ———.*'

"The law imposes a penalty of \$100 upon any person who has not obtained copyright who shall insert the notice '*Entered according to act of Congress,*' or '*Copyright,*' etc., or words of the same import, in or upon any book or other article.

475. Translations.—"Any author may reserve the right to translate or to dramatize his own work. In this case, notice should be given by printing the words '*Right of translation reserved,*' or '*All rights reserved,*' below the notice of copyright entry, and notifying the Librarian of Congress of such reservation, to be entered upon the record.

476. Duration of Copyright.—"The original term of copyright runs for twenty-eight years. Within six months before the end of that time, the author or designer, or his widow, or children, may secure a renewal for the further term of fourteen years, making forty-two years in all.

477. Renewals.—"Applications for renewal must be accompanied by explicit statement of ownership, in the case of the author, or of relationship, in the case of his heirs, and must state definitely the date and place of entry of the original copyright.

478. Time of Publication.—"The time within which any work entered for copyright may be issued from the press is not limited by any law or regulation, but depends upon the discretion of the proprietor. A copyright may be secured for a projected work as well as for a completed one.

479. Assignment.—"A copyright is assignable in law by any instrument of writing, but such assignment must be recorded in the office of the Librarian of Congress within sixty days from its date. The fee for this record and certificate is one dollar, and for a certified copy of any record of assignment one dollar.

480. Duplicate Certificates.—"A copy of the record (or duplicate certificate) of any copyright entry will be furnished, under seal, at the rate of fifty cents each.

481. Serials or Separate Publications.—"In the case of books published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright is to be entered with each volume or part of a book, or number of a periodical, or variety, as to style, title, or inscription, of any other article.

482. Copyrights for Works of Art.—"To secure a copyright for a painting, statue, or model, or design, intended to be perfected as a work of the fine arts, so as to prevent infringement by copying, engraving, or vending such design, a definite description must accompany the application for copyright, and a photograph of the same, at least as large as 'cabinet size,' should be mailed to the Librarian of Congress within ten days from the completion of the work or design.

483. No Labels Copyright.—“Copyrights cannot be granted upon Trade-marks, nor upon Labels intended to be used with any article of manufacture. If protection for such prints or labels is desired, application must be made to the Patent Office, where they are registered at a fee of \$6 for labels and \$25 for trade-marks.

484. Full Name of Proprietor Required.—“Every applicant for a copyright must state distinctly the name and residence of the claimant, and whether the right is claimed as author, designer, or proprietor. No affidavit or formal application is required.”

BAILMENTS.

485. Bailment.—A bailment is a delivery of goods or chattels, for some special purpose, upon a contract which is either express or implied, to be held for the purpose for which they were delivered, and to be returned, or in some manner disposed of, when the purpose for which they were delivered has been fulfilled. There are two parties to a bailment; first, the *bailor*, or the person who delivers the goods; second, the person who receives the goods, called the *bailee*.

486. Subject-Matter.—The subject-matter of the bailment may consist of personal property, or personal services which are hired about the property. The undertaking to perform the trust needs no consideration except the delivery and acceptance of the goods, and the bailor has a legal right to insist upon the fulfillment of the trust by the bailee. A farmer delivers wheat to a miller to be manufactured into flour, and the miller takes the wheat and agrees to return a barrel of superfine flour for every three and three-fourths bushels of wheat. This is a bailment, because the wheat is delivered for a special purpose, and the same property, although in a changed condition, is to be returned by the bailee to the bailor. But if the miller had merely agreed to give so much flour for the wheat, without any understanding that the flour was to be manufactured from the wheat, then it would be barter instead of a bailment; that is, an *exchange* of property, instead of a return of the *same* property.

487. Different Kinds of Bailment.—Bailment is generally divided into five different kinds, viz.: *deposit*, *mandate*, *loan for use*, *pledge* or *pawn*, and *hiring*. Each of these five kinds of bailment is influenced by some kind of benefit, and the benefit is of three different kinds, viz.: first, where it is exclu-

sively for the bailor, or a third party; second, where it is for the bailee; and, third, where it benefits both parties.

488. Diligence and Neglect.—Where the bailor is to receive all the benefit of the bailment, only *slight* diligence is required of the bailee, and he is accountable only for *gross* neglect. Where the benefit is exclusively for the bailee, *great* diligence is required of him, and he is answerable for *slight* neglect. Where the bailment is for the benefit of both the bailor and bailee, only *ordinary* diligence is required of the bailee, and he is only liable for ordinary neglect.

Ordinary neglect is the omission of that kind of care which a man of common prudence takes of his own property. *Gross neglect* is the omission of that care which a man of common sense, however careless, takes of his own affairs.

Slight neglect is the omission of that care which a very particular and prudent person takes of his own property. But diligence generally depends much upon the nature and value of the bailment, and also upon the customs of trade.

489. Deposit.—A deposit is the keeping of goods or chattels for the bailor by the bailee, without compensation, to be returned when called for. It is a voluntary undertaking on the part of the bailee, and the trust is to be fulfilled without any reward. The parties to this bailment are called the *depositor* and the *depository*. The depository undertakes the keeping of the goods, and to exercise over them reasonable care, which requires only slight diligence, and he is only liable for gross neglect. A deposit can be made in respect only to personal property, and may be made by any person competent to make a contract. The depositor need not be the owner of the property deposited, it is sufficient to have possession of the property. But the rightful owner may demand and recover it from the depository. The benefit is to the depositor.

490. Specific Object.—The specific object of the deposit is that the goods shall be kept voluntarily and gratuitously, and that the very goods shall be returned in the same condition, as nearly as possible, as when deposited. As a general rule, no

person is obliged to become a depositary in opposition to his own will, but his consent need not always be expressly given, it may sometimes be inferred from circumstances, as where timber, floating in a river, drifts upon a person's land. So a person finding property assumes the responsibilities of a depositary.

491. Use of Deposit.—Generally the depositary has no right to use the deposit, especially where it would suffer injury, or be liable to loss from the using; but if the use is beneficial to the deposit, as the exercising of a horse, and advantageous to the depositor, he has an implied right to use it.

492. Return of Deposit.—The depositary must return the *identical thing* deposited when called for by the depositor. A deposit of *goods* is different from a deposit of *money* in a bank, which latter is in law called a *mutuum*, and the same *money* need not be returned, but the same goods must be, and in as good condition as when received, except natural waste or decay. But if the deposit be of a perishable nature, and is likely to become worthless, he may sell it and return the proceeds instead.

493. Excused from Returning.—The depositary is sometimes excused from returning the deposit; as, first, where it was destroyed by inevitable accident; second, where it has perished from its own inherent defects; third, where it was destroyed by reason of its perishable nature; fourth, where the loss was owing to the slight neglect of the depositary.

494. Delivery to the Owner.—The depositor is not always the owner of the thing deposited, and where the rightful owner demands the delivery of the deposit, and proves his title thereto, the depositary will be under obligation to deliver the deposit to him, and the fact of his having so delivered, will be a sufficient answer to a demand made by the depositor.

495. Liability of Depositary.—If the depositary refuse to return the deposit, without some good reason, he is liable to the depositor, as for a conversion of the property to his own use, but generally he is not liable unless he be guilty of some

default, or of gross negligence, by reason of which the deposit suffered loss.

496. Mandate.—A mandate is a bailment of some personal property, upon or about which the bailee agrees to do some act, or work, without recompense. In the deposit, the *keeping* of the thing is the principal object, and the labor and care that may be necessary are only incidental; whereas, in the mandate, the *labor* is the principal thing, and the custody is only incidental. A mandate is in respect to a legal and definite act to be done in the future, and is made by an express or implied contract. It is governed by the same general rules as the deposit; both are gratuitous undertakings. In the mandate the person employing is called the *mandator*, and the person employed is called the *mandatary*.

497. Elements of a Mandate.—There are three necessary elements in the composition of a mandate; *first*, the labor and services to be performed, or the subject-matter of the contract; *second*, that which is to be done must be gratuitous; and, *third*, the mandatary must voluntarily intend to do that which he promises to undertake. It must be something to be done in the future, and have respect to something that is certain, and must be of such a character that it may be considered the mandator's act, although done by the mandatary, and it must be something which is capable of being done. The mandatary has no property interest in the thing, except that he have a lien for any expenses he has incurred. But the possession of the thing gives him the right to bring an action for any tort or wrong done by a third person.

498. Liability of Mandatary.—The mandatary is responsible for gross negligence, but there is an important difference between his liability in case of a nonfeasance, and that of a misfeasance. A nonfeasance is the omitting to do that which one promises to do gratuitously. If the undertaking was never commenced, there would be no liability, because there was nothing to support the promise. But if one promises to do something gratuitously, and really begins to do it, and, through his careless-

ness or neglect, the other party suffers loss, then it is a misfeasance, and he is liable the same as if he were paid for his services; as where one undertakes to move a valuable piece of furniture from one building to another, and by his carelessness it is destroyed, he would be liable. He must bring sufficient skill to his undertaking to perform his duties in a creditable manner.

499. Terminating the Contract.—The contract of mandate may be terminated in several ways; *first*, by the death of mandatary if no part of the mandate is executed; if it is partly executed then it may be finished by his relatives or executor; *second*, by the death of the mandator when it is wholly unfinished; *third*, it may be terminated by incapacity of the mandatary, as by insanity, or by the marriage of a female. It may also be terminated by renunciation of the agreement by the mandatary before he commenced upon it.

500. Loan for Use.—This is a bailment or loan, commonly called borrowing, of an article, for a certain length of time, to be used by the person who borrows it without paying anything for its use. If it were paid for it would be a *letting to hire*, a different bailment from loan for use. The principal object of this bailment is the *using* of the thing lent by the borrower. The benefit is all in behalf of the borrower. The borrower is not liable for any loss or depreciation which results from the use which was contemplated by the parties at the time the loan was made.

501. Use Restricted.—The borrower has no special property in the thing borrowed, and he is limited in its use to the purpose for which it was borrowed. It is a gratuitous loan, and the use is understood to be strictly personal, except where circumstances at the time of the borrowing indicated that it was to be used by a different person or for a different purpose. If a horse is borrowed to be rode in a certain direction, the borrower has no right to ride it in the opposite direction, or if borrowed to drive to a certain place, he has no right to drive to a more distant place, and if the horse is injured, even without his fault, while he is improperly using him, he will be liable for the damage.

502. Diligence Required.—This bailment is exclusively for the benefit of the borrower, and therefore he must exercise great diligence in respect to the thing borrowed, and he will be held responsible for slight neglect. But when the lender knows that the borrower is ignorant, unskillful and incapable, his liability will be limited by such known incapacity. Where the borrower has exercised the proper diligence he will not be liable for losses from inevitable accident, or such as he could not prevent by great diligence. But he must be able to show that he was not guilty of negligence.

503. Duty of Lender.—The lender must not interfere with the use of the article by the borrower or he will be liable for damages; and if he know of any defect in the article lent, he is under obligation to make it known to the borrower; and if he fail to do so, and the borrower is injured in consequence thereof, he will be liable therefor. Ordinary expenses incident to the thing borrowed must be borne by the borrower, such as feeding and grooming a horse; but if a horse get sick, and a veterinary surgeon has to be employed, the lender would be responsible.

504. Pledge.—A pledge or pawn is the deposit of some article of personal property as security for a debt or some obligation. A pledge is distinguished from a mortgage in only giving a special property in the pledge during the holding of it, while the mortgage gives the whole legal title conditionally to the mortgagee. The right of the pledgee depends entirely upon retaining possession of the property pledged. A pledge must be for the *security* of some debt or engagement, but it is not essential that it be for a debt of the pledgor, it may be for the debt of *any* person. The person who delivers the pledge is called the pledgor, and the person who receives it as security is called the pledgee. It is essential that the pledge be delivered to the pledgee—possession is necessary to the consummation of the pledge; therefore, nothing can be pledged unless it can be delivered; but the delivery need not always be actual, a constructive delivery will sometimes be sufficient. And if a person have limited title to a thing, he may pledge it to the extent of his title.

505. Special Property in Pledge.—The pledgee has a special property in the pledge, and may hold the exclusive possession of it against all persons. But if the pledgee voluntarily give up the pledge, he cannot again re-possess himself of it. If, however, it be wrongfully taken from him, either by the owner or another person, he may sue for and recover it. He may also hold the pledge for all incidental expenses resulting from the original debt for which it was pledged, as for interest or necessary expenses. He need not give up the pledge until he is re-im-bursed for all expenditures which properly belong to the debt. This bailment is for the benefit of both parties, giving time to the pledgor and security to the pledgee.

506. Rights of Pledgee.—The pledgee has the right to hold the property as security, and also the right to sell it after the time expires for which it was given ; but he cannot keep the pledge in payment of the debt, nor can he sell it until the time expires and the pledgor fails to redeem it. Where no time is specified for the payment of a debt, it must be paid within a reasonable time. Where the use of the pledge would be beneficial to it, the pledgee has the right to use it, and where it requires use to its preservation, it is the duty of the pledgee to use it.

507. Rights of Pledgor.—The principal right of the pledgor is to redeem the pledge by paying the debt. This right he has either before or after the debt is due so long as the pledgee keeps possession of the pledge, and, therefore, if the pledgee fail to sell the pledge after default of payment at maturity, it will be subject to the pledgor's right to redeem.

508. Termination of Pledge.—It may be terminated by payment of the debt by the pledgor; or by taking other security instead of the pledge; or by the debt becoming outlawed by the expiration of the statute of limitations; or by destruction of the pledge; or by some act of the pledgee which amounts to a release or a waiver of the pledge.

509. Hiring.—This is a bailment in which some personal chattel is let out for use, and for which a price is charged for its

use ; or it may be for labor or services about the chattel. In this contract there are two parties, viz.: *first*, the owner of the goods or chattels, which are let for use, or the person who offers his services for hire, called the *letter to hire* ; *second*, the party who hires the chattel, or services of another, called the *hirer*. The *hirer* pays a compensation for the benefit which he expects to derive from the use of the chattel, or from the labor or services which are to be performed for him, as where one hires a horse and carriage to drive to a certain place, or to drive for a certain length of time and pays a specified price for it, or if he hire a carpenter to do a piece of work and pay him by the hour or day.

510. Duties of Letter to Hire.—The letter to hire must make such a delivery of the bailment as is usual and customary, and after delivery he must not interfere with nor obstruct in the use of it, while the hirer is using it for the purpose, and in the manner which was intended by the parties at the time it was hired. By so doing, he would violate his implied obligation, and make himself liable to the hirer. So long as the hirer is using the thing for the purpose agreed upon, the other party has no right to interfere until the time has expired, or the purpose has been accomplished for which it was hired. But, if the hirer put the bailment to an entirely different use from that intended, then the letter to hire may peaceably take possession of the bailment, but he cannot use force in order to get possession. He may, if he choose, bring an action for *trover*, which is an action at law to recover the value of the bailment. The letter to hire is bound to have the thing in suitable order, and to keep it in repair during its use, but the ordinary expenses during the use are to be paid by the hirer; as where a person hires a horse to drive a distance of one hundred miles and back, it is his duty to pay for the keeping and feeding of the horse.

511. Duties of the Hirer.—The hirer buys the use of the bailment by agreeing to pay the price, and has a property interest in it which gives him the right to retain possession of it, and to maintain an action for a wrongful dispossession of it, during the time he was entitled to it. He must exercise ordinary care

and diligence over it while in his possession, as he will be liable for losses occasioned by his own negligence, or by the negligence of those acting under his directions. But for any wilful or malicious acts of a servant he will not be liable. Where, for instance, a picture is hired, if a servant by carelessness injure it, the hirer is liable, but if he maliciously cut it to pieces, the hirer will not be liable. The hirer is not liable for the acts of other servants than his own, or those acting under his directions; he would not be liable for the acts of the letter's servants. He must use the bailment with due diligence, and for the purpose for which it was hired, and must return it at the proper time, and in as good condition as when he received it, except the ordinary wear caused by its proper use.

FIRE INSURANCE.

512. Fire Insurance.—This is a contract, whereby one party agrees, for a consideration, to indemnify another against risk of loss which the other might sustain by the burning of his houses, or barns, or goods, or other property accidentally. The business of insurance is, at the present time, almost entirely carried on by insurance companies, which are incorporated under a charter granted by the State, which enables them to organize as joint stock companies under certain regulations which are required for the safety of the insured. The agreement of insurance is generally embodied in a contract, partly printed and partly written, called a *policy*. The company issuing the policy is called the *insurer*. The word *underwriter* is strictly applicable only to an individual insurer. The party who obtains the insurance is called the *insured*.

513. Importance of Insurance.—Property is a source of power and enjoyment, and it is the aim of every prudent business man to accumulate wealth, but the agents of destruction are numerous, and none is more to be feared than fire. It is an ever-existing and perpetual danger, both day and night, and, if the business man could get no relief from the anxiety it would cause him, it would be a constant wear of care and anxiety which would seriously impair his business energies. But the relief is found by throwing all the risk upon the insurance companies by means of the contract in which they agree to indemnify for any loss that the owner may sustain. The insurers have so nearly perfected a system of insurance that they are enabled to make these contracts of indemnity with a certainty of safety which is almost without exception.

514. Application for Insurance.—To procure insurance the owner must make an application to the company or its agent,

and this should generally be made in writing and be signed by the applicant. The application should contain an accurate description of the property, and of its location and surroundings. A knowledge of the material of the building, whether of wood or brick, the means of heating and lighting it, and for what purpose it is used, is of great importance to the insurers. All questions relating to the property which are asked by the insurers should be answered truthfully by the owner, or the policy may be voidable by the company. If the application is satisfactory the company will accept the risk and issue a policy.

515. The Policy.—The policy is the contract which is made by the insurers and given to the owner of the property, by which they agree, for a consideration mentioned therein, to be paid by the insured, and which is called the *premium*, to pay the owner the amount of loss he sustains by fire, provided it does not exceed the amount *insured* which is mentioned in the policy. For instance, the owner may obtain an insurance on his house for one year to the amount of five thousand dollars, for which he pays a *premium* of ten dollars. This premium is to be paid in any event, whether there be any loss or not, and if there be no loss it is so much gain to the insurers, but if the house is destroyed by fire within the year, the insurance company must pay the owner the full amount insured, five thousand dollars, if that be the valuation agreed upon between the parties. Whatever is insured, whether it be a house or any kind of personal property, it must be distinctly mentioned in the *policy*, and, as a general rule, the insurance is limited to that which is so mentioned. The policy is a printed form with blank spaces to be filled in with the matter pertaining to the insurance, such as the description, etc.

516. The Time.—The time for which the policy is made is generally one year, but it may be made for any reasonable length of time, and is frequently made for two or three years. The beginning and the ending of the time must be stated with the strictest precision, and, therefore, is generally stated to begin at twelve o'clock at noon of a certain day, and to end at the same time on another certain day. When the time expires,

if the parties wish the insurance to continue, it is generally done by making out a *ticket* of renewal, which contains the name of the insured, the amount of *premium* to be paid, and the amount of insurance to be continued, with the number of the policy, and is signed by the agent. This saves the trouble of making out a new policy, and has just the same effect.

517. The Premium.—The amount which is charged by the insurance company for taking the risk, is called the *premium*, and is generally paid in advance, but the time of its payment may be a matter of agreement between the parties. If the policy specifies that the insurance shall not commence until the premium is paid, then there can be no claim for loss against the company, unless the premium be paid.

518. Insurable Interest.—To prevent fraud, it is important that the insurer ascertain the amount of interest the applicant has in the property to be insured, and to prevent parties from receiving more than they are entitled to, a clause is generally inserted in the policy limiting the amount of liability to the "extent of his interest." The greater the extent of interest in the property which remains uninsured, the more, as a general rule, will the owner exert himself to prevent loss. Any one may insure his own property, and so he may insure any property in which he has a valuable interest: a mortgagee may insure the property on which the mortgage is placed.

519. Conditions.—Insurance policies are full of conditions, which are made part of the contract. The following quotations will serve as illustrations: "If an application, survey, plan or description of the property herein insured, is referred to in this policy, such application, survey, plan or description shall be considered a part of this contract, and a warranty by the assured," and, "If the interest of the assured in the property be any other than the entire, unconditional and sole ownership of the property, for the use and benefit of the assured, or if the building insured stands on leased ground, it must be so represented to the company, and so expressed in the written part of the policy, otherwise the policy shall be void." These

conditions, which are very important points in the policy, are usually in very fine print, and we opine but few persons read them carefully enough to know what they are. Another condition very generally inserted in policies is, that the company shall have the right to elect whether to *repair* the house in case of damage, or to pay a certain sum of money. So, also, it is generally conditioned that no material change shall be made in the building without consent of the company; that no additions shall be made, etc.

520. Valued and Open Policies.—There are two kinds of insurance policies. Where a fixed value is put upon the property by agreement between the parties at the time the insurance contract is made, and the value is inserted in the policy, as the insurance of one hundred barrels of flour at six dollars per barrel, it is called a *valued* policy, and the sum expressed in the policy is binding in case of loss. But generally the policy provides that the insurers shall make good the loss or damage to be estimated according to the true and actual value of the property at the time the loss happens: this is called an *open* policy.

521. Amount Insured.—The parties may agree upon any amount they may see fit, but generally buildings are not insured for what is considered their full value. One reason for this is, that it might be an inducement to the owner to have the property destroyed in order to get the insurance. Most companies limit the amount of risk they will take on any one building or block of buildings to five or ten thousand dollars, so that the owners of large and valuable buildings and blocks are sometimes obliged to obtain insurance in a large number of companies in order to secure a sufficient amount of security. The amount expressed in the policy or policies is the extreme amount which can be collected in any case, even if the loss should double or quadruple that amount, and where the loss is less than the amount insured only the actual loss can be recovered. In case of loss where the property is insured in several companies, if the loss is less than the amount insured, each company pays its proportion of the actual loss in proportion as the amount insured

in each is to the whole amount insured, but in no case does the insured get more than the actual loss.

522. Joint Stock Companies.—To carry on the insurance business successfully requires large amounts of money, and for that reason it is almost universally carried on by incorporated stock companies. Each of the stockholders becomes such by subscribing and paying for so many shares of the capital stock, which is represented by stock certificates. The capital is secured by the sale of these certificates.

523. Settlement of Losses.—The following clause will show what is to be done in case of loss: "The amount of loss or damage to be estimated according to the actual cash value of the property at the time of the loss, and to be paid sixty days after due notice and satisfactory proofs of the same shall have been made by the insured, and received at this office, in accordance with the terms and provisions of the policy, unless the property be replaced, or the company have given notice of their intention to rebuild or repair the damaged premises."

REFLECTIONS AND SUGGESTIONS.

After the traveler has made his first tour through an unfamiliar land it is well for him to reflect upon what he has been over and what he has seen, and to ascertain if he has gleaned from it all that he might have done, or all that could be of value to him. It not infrequently happens that careful reflection results in the conviction that many points of interest, and perhaps some of the most importance, escaped observation, or were but casually noticed. Presuming that the matter presented in the foregoing pages will have been most frequently traversed by young men who are soon to begin business life, we ask that, before laying aside this book, they will seriously reflect upon the matters passed over, and settle the question whether, from the topics presented, all has been gathered which should have been, or which might be, of value in business life. If the conclusion is reached that everything of importance has been thoroughly mastered, then we have only words of congratulation and commendation, and will not ask further investigation. But should the conviction, after careful reflection, be that much of importance escaped notice, and valuable points were but imperfectly understood, then we ask, as a matter of duty to themselves, and as a favor to their instructors, that they retrace their course and gather up all that was too hastily and carelessly passed. It would be well, too, for young men to reflect upon the necessity of law, and its cause. If all men were perfect, there would be little need of law; if all men were disposed to deal justly, there would be less need of courts and lawyers; but, unfortunately, selfishness enters largely into the composition of most men, and many are unwilling to get an honest living by honest work. It therefore becomes necessary to protect the honest and punish the transgressor. Law consists of a code of principles and rules, based upon right and justice, the elements of which are all contained in the Ten Commandments. The duties

of men are so well defined in these commandments as to render little other law necessary if their precepts were conscientiously regarded. The moral law takes cognizance not only of the acts of men, but also of their thoughts and intentions, while the common law is confined almost entirely to their acts—that is, to what they do, instead of that which they intend to do—and thus it is in accordance with the latter standard that each individual is usually judged by the community in which he lives. This brings us to the consideration of the value of a good character.

Character is a distinctive quality either for good or for evil. A good character is the richest boon a man can possess, either in a moral or a business sense, since it is impossible to have a good character without being an estimable man, and the confidence which is established in a business man by a good character is the most valuable capital he can have. Every young man has it in his own power to establish for himself just such a character as he may desire. It is a thing of his own making, and when once thoroughly established it will bear fruit either for good or evil. Everywhere, the world over, the man who stands firmly for principle, against every allurements and all opposition, will secure the confidence of his fellow-men and the admiration of all who know him.

There can be no grander spectacle than to see a man sacrifice everything for principle. A noble character not only permeates the community which surrounds it, but its influence often reaches beyond the limits of its own country, and is felt on distant continents, inspiring and elevating multitudes of people. The memories of the great and good men who lived in ages that have passed are still kept fresh in the minds and hearts of the people, and cherished as examples worthy of emulation. The old and familiar adage that “honesty is the best policy” must have originated from the world’s experience with the ever-existing conflict of right against wrong, which must finally and inevitably terminate in the triumph of the right. It is a truthful saying, which will be as forcible in ages to come as it is now or has been in past ages. Of the business man with reference to whom it can truly be said “his word is as good as his bond” very seldom will a bond be required; his character for sterling honesty will establish for him a credit for anything he may need.

There is nothing more valuable to a business man or a business house than a well-established confidence, resulting from strict integrity and honest dealing. Every man has a character of some kind, either good or bad, and sooner or later his true character will be known; often it is known to the world when he little suspects it. The mercantile agencies can give the commercial standing of almost any man doing business in any part of the country, while many of these persons may not be aware that they are known beyond the circle of their own acquaintance.

Character is made up of the little things of every-day life, which taken separately might seem unimportant, but when woven together make a complete record. Therefore, it is, that every person may mould his character according to his own design; he may build as he will, since he furnishes all the material out of which his character is formed. He who builds well in this respect has a richer endowment than money and goods, and a more valuable inheritance to leave to the world.

The young man who is about to engage in business should consider carefully what is necessary to success. President Garfield said: "Men succeed because they deserve success. Their results are wrought out, they do not come to hand ready-made; poets may be born, but success is made." First of all it should be understood that all true and permanent success is based upon genuine character, without which no success is worth having. No person can afford to do anything which will tarnish his character. Wealth obtained at the sacrifice of character will never prove a blessing. Many a young man with brilliant prospects has been ruined by his haste to get rich. Emerson says: "Man was born to be rich, and inevitably grows rich by the use of his faculties." Certainly no country in the world furnishes better opportunities for securing wealth than our own, and especially is there none where a poor boy can so easily secure a fortune and an honorable position as in the United States, "the land of the free and the home of the brave." Most of the wealthy men of to-day commenced their business life poor, and have won their own way to wealth and position by their own efforts. There is no discipline which proves of so much value to young men as being thrown upon their own resources. If

they have anything in them which entitles them to success, they will be sure to succeed.

But success will not come of its own accord; there must be diligent application and persevering effort to bring about grand results. Intelligent effort and diligent application will almost invariably make any honorable business successful. Success is an intellectual accomplishment; the more knowledge is brought into any undertaking the more certain it is to be a success. It is a safer rule to concentrate one's powers on a single enterprise than to be engaged in many. To the young men of the present age the accumulated experience of shrewd business men is an invaluable inheritance, by which they may profit if they will. This experience goes to show that there is always *a reason in the man* for his good or bad fortune.

Neither honor nor wealth come to men by luck, they must both be earned before they can be enjoyed, and neither can be earned in a day; it is only by persevering effort and indomitable determination that most men reach the acmé of their ambition. Every young man has within him forces and capabilities which will enable him to work out for himself honorable position and acquire an ample fortune; but idleness will never produce wealth, nor will immorality bring honor. Property is wasted by the idle and imbecile, and is accumulated by the industrious, brave and persevering. This rule is as imperative as if it were governed by the principle of chemical repulsion and attraction. Therefore, since every young man has the requisite forces and capabilities within himself to secure the highest possibilities, it only remains for him to put these forces in motion, and patiently and diligently guide and protect them, and they will surely bring a generous reward. The cultivation of the intellectual faculties not only affords one the greatest pure enjoyment, but these faculties when well disciplined become the controlling forces in the acquisition of wealth, and when guided by moral sentiment they become the sources of all the noble qualities which bring honor and fame. Do not abuse or neglect the precious faculties that have been given you. Cherish and cultivate them. Determine to reach the highest plane of intellectual culture, by systematic, diligent and persevering study, and you will not fail of success.

J. C. BRYANT.

APPENDIX.

QUESTIONS FOR REVIEW.

CONTRACTS.

1. What is a simple contract?
2. What are the primary elements of a contract?
3. What is the agreement, and what are its elements? Mention the primary and secondary elements of a contract.
4. What number of persons is required to make a contract?
5. What ability is required? How are persons classified? What are corporations and States called? What kind of contracts may corporations make? What may States and their agents do? Are contracts made by minors binding? When may contracts of marriage be made, and what are they regulated by?
6. What is another necessary element of a contract? What kind of assent must it be? How may it be indicated?
7. What is the first step towards making a contract? What is a proposition? When may it be withdrawn? What makes a proposition binding? What may custom do? How may a proposition for the return of stolen articles be accepted? How long is such an offer binding?
8. What is meant by giving an option or refusal? When must the acceptance be to make it binding? Can the party giving the option retract it? When and why? How must the acceptance be? What illustrations are given?
9. What are sales on trial? In effect, what does the buyer say? When cannot the seller withdraw his offer? What right has the buyer?
10. When, and how, may revocation of option be made? What effect does the death of the party making the offer have, and when? How otherwise can an option be revoked?

11. When may a proposition made by letter be accepted? When may it be withdrawn? What illustration? When an order for goods has been received, and the goods placed in the hands of a carrier, can the order be withdrawn?

12. How must a proposition be accepted? When does an acceptance sent by letter take effect? Can an acceptance be revoked? How may the acceptance be?

13. What is express assent? Is it affected by custom?

14. What is implied assent? Is it affected by custom and usage? What implied assent is there when a draft is accepted for honor? What illustration of co-sureties?

15. What is the rule in case of mistake of law? What is every man presumed to know? What kind of contracts does it apply to?

16. What does refusal of proposition do? Has any person a right to accept a proposition except the person to whom it is made? What illustration?

17. What parties are bound by a contract? Can other parties sometimes be substituted? What illustrations?

18. What effect does mistake of fact sometimes have upon a contract? What does Justice Story say about mistake of fact? What does a palpable mistake entitle a person to? What illustration?

19. What is the consideration? What may it be? Must it always be expressed?

20. What is a valuable consideration? What may parties do about consideration?

21. What is a good consideration? What will it not support?

22. What is sufficiency of consideration? Must the promise and consideration be equivalent? What should it have? How can a person make himself liable without consideration?

23. What effect will forbearance sometimes have? What illustrations? How may forbearance be sufficient to support a promise?

24. When will mutual promises support each other? What does the liability arise from? What illustration?

25. A moral obligation is sufficient for what? What illustrations?

26. What is the statute of frauds? Does it apply to original promises? What kind of undertakings are affected by it? What illustrations are given? What application does it have to sales?

27. What must the thing to be done be? On account of what may contracts be void?

28. What is fraud? What if a contract be tainted by fraud? By whom are such contracts voidable? When must it be avoided, if at all? Can the party perpetrating a fraud take advantage of it?

29. Is a contract valid which binds a person not to do any business? Why not? What illustration? Is a contract for a partial restraint of trade valid?

30. What causes will render contracts void?

31. What do contracts derive their force from? To understand a contract what is it necessary to get at? How is this done? How are commercial contracts construed? What will the law do if the terms of a contract are ambiguous? What will usage and custom sometimes do?

32. What will violation of essential requisites or omission of necessary elements of a contract do? What defenses may sometimes be set up?

33. Who is the person to perform in a contract? What illustration is given? What is necessary when plea of tender is made if suit be commenced? How must performance be done? When will it discharge the contract?

34. How is every contract to be performed? What are to be inferred from the terms of the contract? How must express stipulations be performed?

35. When is time an important element in a contract? What must a party do if he choose to deviate from a fixed time? What does a month mean in simple contracts? What does it mean in negotiable paper? What does a day mean at a bank?

36. Where something is to be done at a particular place, what must the person to perform do? What must be done if money is to be paid at a bank? What is the rule where no place is mentioned?

37. What if the thing promised is impossible of performance or illegal in character? What if impossible for promisor but

not for another? What will excuse non-performance? Where one party violates a contract, what may the other do?

38. How must payment be to be legal? How must it generally be made? If other property is accepted, what affect will it have? When will part payment cancel a debt?

39. If the debtor give his own note or bill of exchange, what effect does it have upon the debt? What must the party holding such paper do when it becomes due? If paper is taken as payment and dishonored, how is the debt affected?

40. If a note of a third person is received by the creditor of his own choice, how will it be considered? What if the debtor indorsed the note and it is not paid? How if the creditor received the paper as security and it is not paid?

41. Is a receipt proof of payment? How may it be set aside? What exception is it to the general rule?

42. What is accord? What effect does accord without satisfaction have upon a contract? What may the parties do without its operating as a defense?

43. What is arbitrament? How can parties submit their differences to arbitration? Where an award has been made, what can be done?

44. What effect does pendency of another action have? What is a good defense to a suit brought for the same cause?

45. What is a release? Is any particular form of words necessary? How may it be made? How may verbal contracts be released? What do written contracts require? What may a release be for? What effect does a release of the principal of a debt have? What effect the release of one of several joint debtors? How when given to one of several joint creditors? In how many ways may a release result from operation of law?

46. What is a tender? What is the effect of a legal tender before suit is commenced? As soon as suit is commenced, what must be done to make the tender good? By whom may a tender be made? What amount must it be? May it be conditional? What must it be made in? Are national bank bills a legal tender?

47. How may common law be changed? What are the laws enacted by the legislatures of the States called? Are the

statute laws of the States uniform? What effect has the statute of limitations? May a person waive the right to plead it as a defense? How many years does it usually run? What does it do to the debt? When does it begin to run? When, on a note payable on demand? When, on a conditional promise? How affected by the absence of debtor from the State? What will renew a debt after it is outlawed? What is the effect of a payment? What if made by one of the joint makers?

48. What is a set-off? How was this defense created? How must a debt be, to be used as a set-off? Can a debt, due from one of the partners, be set-off against a debt owing to the partnership? If a person is sued as administrator, can he apply a debt due to himself as a set-off?

49. What is recoupment, and how did it originate? What is the illustration?

50. What is the subject-matter of business form No. 1? What does the party of the second part agree to do? How and when does he agree to do it? What does the party of the first part agree to do? How do they bind themselves?

51. What is the contract embraced in form No. 2? What is the express condition? What does the party of the first part agree to do? What if the payments are not made as specified? Why is a seal necessary?

52. What is the contract under form No. 3? What does the party of the first part agree to do? What the party of the second part? What condition is inserted?

53. What is the subject-matter of business form No. 4? What does the first party agree to do? When does the second party agree to pay?

54. What does the party of the first part agree to do in business form No. 5? How does the second party agree to pay? What security is to be given? How is the title to be conveyed?

NEGOTIABLE PAPER.

55. What does the term negotiable paper embrace? What is the promissory note? What are bills of exchange used for? What should every person be familiar with?

56. What did the needs of commerce give rise to? What preceded the use of money? What did commerce require to facilitate trade? At what early period was negotiable paper probably used?

57. What is the peculiarity of negotiable paper? How can it be transferred? What particular words are generally used to make it transferable? If order and bearer are both omitted in the body of negotiable paper, what effect does it have? What does the statute laws of some States require? Mention some of the requirements.

58. What constitutes negotiable paper? Is any particular form of words necessary? What has been held sufficient? What must the promise be for? How must the amount be? May there be any contingencies? Is a promise to pay on the arrival of a boat sufficient? How if it be payable after the death of a person?

59. What is a negotiable promissory note? What does its value and importance depend chiefly upon? Give illustrations of how notes may be made negotiable. How might notes be written? How should they be written?

60. To whom is the maker of a note or the acceptor of a draft first liable? To whom may they be liable afterwards? What are the two classes of persons called? May the liability of the maker sometimes be greater to one holder than it might have been to another? What is the explanation for this?

61. What does the law sometimes give subsequent parties? What is the note in the hands of the payee? Why may one person collect a note when another could not? What is a person supposed not to know if he take a note before maturity? May an innocent holder transfer and give a good title?

62. How must a subsequent party receive paper to get a good title? May accommodation paper be taken with knowledge and yet be good? Will receiving paper before maturity remedy *all* defects? What kind of defects are overcome by transfer?

63. Is negotiable paper ever transferred after maturity? Does it have the same effect as if transferred before? What if it remain in the hands of the original payee until maturity? What then happens to it?

64. How many ways are there generally of transferring? If payable to order what must be done? When payable to bearer how may it be transferred? May a payee indorse a bill if payable to bearer? What will be the effect?

65. Why is the date an important part of a note or draft? In computing time, is the day of date counted? If the date is omitted is the paper void? What must the holder do in such case? What does date mean?

66. How must the time be in negotiable paper? At what time may paper be payable? If no time is specified, when is it payable?

67. What is important about person in negotiable paper? Where should the name of the person to whom it is payable appear? What other name should appear in the note? What must the maker be competent to do? How may persons be incompetent to make negotiable paper? What has legislation done in some States? Can an unmarried woman make contracts?

68. How should the amount be specified, and how expressed? Where there is a discrepancy in the amount expressed by words and figures, which governs? What example as to ambiguous words?

69. Is a contract good without a consideration? What is a promissory note? May a note which was given without consideration afterwards become good? May a note which was lost or stolen be good in the hands of the holder? In whose hands would it not be good, and in whose would it be good?

70. Is any particular form of words necessary in a note? What must it conform to? Is the mere acknowledgment of a debt sufficient to constitute a note? Is a promise to pay in merchandise a promissory note? What example of the rejection of the word not?

71. What does form No. 6 illustrate? What is the wording of this form? Is it negotiable or not? What makes it negotiable?

72. What is form No. 7? How does it differ from No. 6? Is it negotiable? Why not? How could it be made negotiable? By whom can the latter be collected?

73. Who is the payee to a note or draft? Who is the payee in form No. 6? Who in No. 7? What is the payee sometimes called? Is the payee's name always expressed in the face of the paper? What may the holder do when a note is payable to bearer only?

74. What is the person called who is responsible for the payment of a note? Who is the maker in form No. 6? Who in form No. 7? What does the maker bind himself to do? Need he pay it before maturity? If a note is paid before maturity and not taken up may the maker be obliged to pay it again?

75. What is a due bill? Is it for money or goods? When may it be payable? What is it similar to when payable in money? How is a due bill written?

76 and 77. How does form No. 8 differ from form No. 9?

78. What is a draft? How many persons are there to a draft? How does it differ from a note?

79. What is a bill of exchange? How many kinds of bills of exchange are there? What are they? By what other names are they known?

80. What is an inland bill? What drafts are inland bills?

81. What is a foreign bill? Why are they called foreign? How are foreign bills distinguished from inland? What are foreign bills used for? What can be done if a foreign bill is lost? What precaution is taken?

82. Is any particular form of words necessary in a draft? How does the form of a draft differ from a note?

83. What is the wording of form No. 10?

84. What are the two kinds of parties to a draft called? Who are the original parties to a note? Who are the original parties to a draft? Who is the drawer in form No. 10? Who is the drawee? Who is the payee? Who are the original parties in the draft? Who may be the subsequent parties?

85. Why are notes and drafts numbered? Where is the number usually placed? What do merchants have? How are the numbers kept?

86. What is the theory of drawing a draft? Are drafts ever drawn when the drawee is not indebted to the drawer?

87. In what different ways may a person be liable on negotiable paper? When is a person absolutely liable? When is he conditionally liable? What illustration? Is the drawee liable before he accepts?

88. When a draft is first written up, what is it? Is it necessary that it be accepted if payable at sight? Why is there a difference in different States? Where a draft is made payable after sight, what is necessary to be done? How does the drawee accept? When he accepts a draft, what does it imply? Is it necessary to have a draft accepted when it is payable after date? If the drawee wants time to decide whether he will accept or not, what may be done? Suppose he refuse to return the bill? What is an acceptance in effect?

89. Are acceptances always uniform in form? What does the statute of New-York require? How may the acceptance be? What effect has a conditional acceptance?

90. What is the wording in form No. 11? Who is the drawer, the drawee, and the payee?

91. When the payee receives a draft payable after sight what should he do? By whom must it be presented? To whom must it be presented? When drawn on a partnership, to whom may it be presented? If drawn on two persons who are not partners, to whom should it be presented? What time during the day should a draft be presented? Where should it be presented? Is the holder obliged to receive a conditional acceptance?

92. What is a draft called when the drawee refuses to accept? What is the duty of the holder immediately after a bill is dishonored? By whom should the protest be made? What could be done if a notary public could not be found? What is the custom with banks? On what day must the protest be made? If the protest is not made out in proper time, what is the result?

93. What is a protest of a note or draft? What is accomplished by it? How and by whom must it be made? By whom may it be made if a notary public cannot be found?

94. What kind of negotiable paper is represented in form No. 12? Why was it necessary to have it protested? Was Andrews absolutely, or conditionally, liable before the protest?

95. What is the instrument called which is illustrated in form No. 13? Is it a written or a partly printed instrument? What are its principal objects? By whom is it executed? By what is it evidenced?

96. What is next to be done as soon as the protest is made out? To whom should notice be sent? To whom is notice sent in this instance? What other parties would often need to be notified?

97. What is the form of notice sent? How should it generally be sent? By whom is it usually sent?

98. What may be done immediately after the bill is protested and notice sent? What is an acceptance for *honor*? For whose honor may it be accepted?

99. How is it accepted for honor? Who accepts this draft, and for whose honor? Is Mr. Miller's acceptance an *absolute* promise to pay, or is it only *conditional*? What must the holder do after such an acceptance? Is the holder obliged to receive an acceptance for honor? To whom must it be presented for payment at maturity? If the party upon whom it was drawn does not pay it at maturity, what must be done?

100. In cities what is required of a person who wishes to become a depositor in a bank? Where his references are satisfactory, what is he then requested to do? What is the object of writing his name in the signature book? What is done in cases of partnerships?

101. Is there more than one way of depositing money? What does the depositor receive when he makes a deposit?

102. What is the convenience of a bank-book? What is generally printed across the top of this book? Are the deposits entered on the right-hand or left-hand page of the bank-book? Who makes these entries? What does such an entry show? When a person makes a deposit of money, what does he fill out? When a note is left with a bank for collection, what is generally done with it? After it is collected, what is done? Do business men generally consider it necessary to keep an account with the bank in their regular books? What is all that is necessary?

103. When a check is paid by the bank, is it at once charged

up on the depositor's bank-book? When are paid checks entered on the depositor's bank-book? When they have all been entered in the bank-book at a particular time, what is then done? When does the depositor receive back his paid checks?

104. What is a deposit ticket? What is its convenience? What has it printed on it? By whom is it furnished? What double purpose does it serve?

105. Describe the form and wording of the deposit ticket. By whom is it filled up? To whom is it given, and by whom is it kept?

106. What is a bank check? Is it negotiable? Is any particular form of words necessary? When paid at bank what is done with it? How often are checks usually charged up in the depositor's bank-book? Are checks usually made payable to order, or to bearer? Are they drawn on time, or payable at sight? Do they ever need acceptance? What is the difference whether a check is made payable to order, or to the bearer? What record should be kept of checks?

107. How does the check which is illustrated in form No. 16 read?

108. How does a check serve the purpose of a receipt? What is the custom of banks in regard to the indorsement of checks? When paid checks are returned to the depositor, when do they answer the purpose of vouchers? What is the indorsement of the payee evidence of?

109. What is the presumption when a check is drawn? Does it always prove true? Do business men ever draw checks when they have not enough money in bank to meet them? What in such cases do they generally expect to do? Why is it not safe to take checks from strangers? How may a business man protect himself when a check is offered him by a stranger? How is a check certified? By whom is it certified? When certified, what is the effect? What is certifying similar to?

110. What is the wording of form No. 17? What is written across its face? Why is it written in red ink?

111. When checks are received by business men what are they usually called? When a check is received on account of a debt, and is not paid when presented at bank, is the debt can-

celled? Suppose the holder were guilty of negligence in presenting the check for payment, who bears the loss? When is a check evidence of payment?

112. What responsibility rests upon the teller of a bank in respect to checks? If a bank pays a forged check can it recover from the person whose name was forged? Can a forged check be ratified by the person whose name was forged?

113. What is a raised check? If a bank pay a raised check how much can be charged to the drawer? What should persons writing up checks be careful to do?

114. When are checks payable? How long after a check is received can a person safely hold it? If a bank fail after a check is drawn what determines which person shall lose it? Upon what day should a check be dated? Is a check good when it is dated ahead?

115. What is a certificate of deposit? Can checks be drawn against certificates of deposit? What is the convenience of certificates of deposit?

116. What is the wording of form No. 18? By what officer of the bank is it signed? When is it payable? What must the holder do when it is presented for payment?

117. What is a teller's check? What is the theory of such a check? Is a teller's check negotiable? Is the bank liable for a teller's check?

118. What is a special deposit? Where a special deposit is made has the bank any right to use the money?

119. What is a stock certificate? By whom is a certificate of bank stock signed? What amount does each share generally represent?

120. How is form No. 19 worded? How many shares are represented in this certificate? What is the value of each share?

121. How are the directors of a bank chosen? How are the votes regulated? When the owner of stock cannot attend an election what may he do?

122. What is the wording of form No. 20, the appointment authorizing A. P. Wright to act as proxy? By whom is it signed?

123. How may stock in a bank be transferred? May it be transferred by an agent?

124. What is the wording of form No. 21? What does it authorize the agent to do?

125. What is a foreign bill of exchange? How are they usually drawn? In what currency are they generally payable? Why are they drawn in sets? What is the custom with banks at the present time? Do foreign bills differ in principle from inland bills?

126 and 127. How are the two drafts illustrated in forms Nos. 22 and 23 worded, so that if both reached their destination only one need be paid?

128. By whom must the protest of a foreign bill be made, and by whom the notice given? Does the law require that inland bills be protested by a notary public? What is the custom with banks and business men in regard to protesting? What is the object of protesting? When must the protest be made, and when must notice be sent?

129. What is business paper? What is business paper founded upon? In whose hands is it good?

130. What is accommodation paper? What illustration is given of such paper? May accommodation paper become business paper? What illustration of accommodation paper becoming good and valuable business paper?

131. Are the words "value received" indispensable in negotiable paper? What does the law presume in relation to value? Where is the burden of proof? When these words are used what do they mean?

132. What words are required to make paper negotiable? What is the difference between *order* and *bearer*? When cannot paper be transferred without indorsement? What difference does it make in regard to transferring paper which has been lost or stolen whether it be payable to order or bearer?

133. May a note be signed by more than one person? What is a note called when signed by one person only? What is it called when signed by two or more persons?

134. May individual notes be written in more than one form? In relation to what may they differ?

135. What is the wording of form No. 24? Who is the payee? Who is the maker?

136. What determines whether a note is a joint or a joint and several note?

137. What is the wording of the note given in form No. 25? Is it a joint or joint and several note? Is there anything in it to indicate that one of the makers only could be made to pay it?

138. Which is the safer for the holder, a joint note, or one which is joint and several?

139. What is the wording of form No. 26, and how does it differ from the preceding form?

140. How does the wording of form No. 27 differ from the one immediately preceding? Why is this a joint note?

141. When a note is signed in the partnership name, what is it, joint or several? Does it make any material difference whether it is worded "I promise to pay," or "we promise to pay"? When a note is written we jointly or severally promise, how is the word *or* to be construed? When cannot a note signed in the firm-name be collected? When may such a note be collected?

142. When does not a note draw interest? When does it draw interest? Would either of the preceding notes draw interest before maturity?

143. What is an indorsement? What purpose does an indorsement serve? What gives negotiable paper its chief value? How does the payee transfer his title to another? Are indorsements generally made before or after maturity? When the payee has indorsed a note what is he called? What is the person called to whom it is delivered?

144. What are the effects of an indorsement? What contract does the payee make, and with whom, when he indorses a note or draft?

145. What is the implied obligation on the part of every indorser? What is the first subject of guaranty? What is the second, third, fourth, fifth? Is a person who is not of legal age made liable by an indorsement?

146. How many different kinds of indorsements are mentioned? Which are most commonly used? Does each serve some particular purpose?

147. What is a blank indorsement? Where should the name be written? Why is it called a *blank* indorsement? How may a note or draft be transferred so long as it remains indorsed in blank? What objection may there be to a blank indorsement? What might an innocent holder do? How may the holder of such paper protect himself? What may he write above the name? Which end of a note should be uppermost when it is indorsed?

148. What is a full indorsement? What does a full indorsement do? Is it commonly used? If a note which is indorsed in full be lost can a person receiving it from the thief get a good title to it? Where should indorsements always be made?

149. How are the blank and full indorsements illustrated?

150. How is the note given in form No. 28 termed in order to make the indorsements? Who should indorse this note?

151. What kind of indorsement does form No. 29 illustrate? What is written on the back? How far from the upper end is the name written?

152. What kind of indorsement is illustrated in form No. 30? How is it worded and arranged?

153. What is a general indorsement? What words should be omitted from the full indorsement to make it a general indorsement? What would be the effect of omitting these words in the body of the note? How is a general indorsement construed?

154. What is a qualified indorsement? Does such an indorsement transfer title without the indorser incurring any liability? What words are used? What is this indorsement called?

155. What kind of negotiable paper is illustrated in form No. 31? Who is the proper person to indorse it?

156. What kind of indorsement is illustrated in form No. 32? How is it written? How does it differ from the full indorsement?

157. How is the qualified indorsement worded? What is the object of this indorsement?

158. What is a conditional indorsement? What kind of condition may it be? If upon a condition precedent, and the event happen, what is the result? Is the original character of paper affected by a conditional indorsement?

159. What is a restrictive indorsement? Does the omission of the words order and bearer in an indorsement restrict? What must it contain?

160. What form of paper is illustrated in No. 34?

161. How is the conditional indorsement in form No. 35 worded?

162. How is the restrictive indorsement made? What particular word makes it restrictive?

163. When may negotiable paper be transferred? What difference does it make whether it be transferred before or after maturity? How does a person take a bill before maturity? What does he take it free from?

164. What is the effect upon negotiable paper if it be not transferred until after maturity? Is any defect in the paper removed by an indorsement after maturity? Does accommodation paper become business paper by being indorsed after maturity?

165. What beside indorsement is required to transfer the title to paper? When may an indorsement be withdrawn?

166. When cannot paper be transferred without indorsement? When may it be? May paper which is indorsed in blank or payable to bearer be indorsed? What is the limit of indorsement? If the first indorsement remain blank what effect has subsequent indorsements?

167. What is the necessity of protesting? If the holder fail to get the paper protested what will be the consequence? Is it necessary to have a bill protested for non-acceptance? To whom is an indorser liable? To whom may he look for indemnity? What does the security depend upon? What distinction is made between foreign and inland bills? What is the custom with business men?

168. What must be done as soon as the protest is made out? To whom must notice be sent? How soon must it be sent? What should each indorser do on receiving notice? When is it not necessary? Should the notice be in writing or verbal?

169. By whom must the notice be sent? What should the notice contain and what describe? May a person who is not the holder send the notice? When notice is sent by mail, how soon must it be deposited in the post-office? If there be delay in delivering, will the notice be good?

170. When is a person liable on negotiable paper without notice?

171. How did days of grace originate? Are days of grace uniform in number in all places? What is the rule of law concerning days of grace? How many days of grace are allowed in the United States? If a note is made payable on the first day of the month, when does it become due? If the third day of grace come on Sunday, when is the paper due? If the third day of grace fall on Sunday, and the second day be a holiday, when does it fall due? How are the days of grace to be counted? When are days of grace added to the original time? Are days of grace allowed on sight paper? Mention some States where they are allowed on such paper, and some where they are not. Are there any States in which days of grace are abolished?

172. What is meant by the maturity of paper? What does its maturity depend upon? What day is excluded in the computation of time? If paper is dated on the first day of a month, and made payable in one month, when is it due? Are days of grace considered part of the original time? Are thirty days and a month equivalent terms? In regard to negotiable paper, what does a month mean? What illustration is given?

173. When should paper be presented for payment? If it be not presented on that very day, what will be the consequence? Will the maker of the note and the acceptor of the draft still be liable? How if it were presented the day before maturity? What does the law enforce? Is negligence ever tolerated?

174. When paper is payable at a bank, what must be done? What is a sufficient presentation? If paper is made payable without specifying any particular place, what must be done? If the maker or acceptor has changed his residence, what should be done? What if the residence cannot be ascertained?

175. When a note is dishonored by want of payment, how soon must it be protested?

176. Is there any peculiarity in the wording of the note in form No. 37? What is its wording?

177. How many times has this note been transferred? How many different kinds of indorsement have been used? What are the several kinds called?

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178. Where was the protest illustrated in form No. 39 made? Does it differ materially from the preceding one made in Buffalo, N. Y.? Do the forms differ in different States? Enumerate some of the expenses for protesting. Is it any dishonor to have one's paper protested? To whom should notices be sent in this instance? How soon must they be sent?

179. May there be such a thing as an accommodation draft? What illustration is given?

180. If the indorser's name be forged, does the holder get any title? Can a person have or transfer any title in paper which violates law?

181. When is want of consideration a good defense? When is it sufficient to prove that it is accommodation paper? When is it no defense?

182. Can the holder of negotiable paper which has been lost or stolen collect? What can the loser do to protect himself? Can the owner of a lost note collect it at maturity?

183. When may the holder of paper demand payment before maturity?

184. What is it important to know in regard to State laws? If a note is made payable in another State than that in which it is made, by the laws of which State is it governed? What illustration is given? What is the rule in law in regard to a contract which is not valid in the State where made? If a marriage contract is valid where it is made may it be invalid in another State? What is the rule in regard to real estate?

185. If while paper is held by a bank as collateral security it fall due, and the bank fail to have it protested, who is the loser?

186. When negotiable paper is transferred by a debtor to a creditor on account, what important question may sometimes arise? When so transferred does it operate as payment? What is the rule in the State of New-York in regard to paper so transferred? What is an important consideration when a receipt is given for such paper?

187. How is the receipt in form No. 40 worded? Would this receipt operate to make the transfer of the paper discharge the debt?

188. How does the receipt in form No. 41 differ from the preceding one? Would the effect upon the debt be the same?

189. Are bank notes negotiable paper? How do they differ from ordinary paper? What are bank notes called? How are they transferable?

190. What bank was the first organized in the United States? What was the condition of the finances at that time? What was the principal circulating medium?

191. What amount of continental money was put in circulation? What was the ultimate value of this currency?

192. What currency was used before the national banks were organized? How were State banks regulated? How was bank currency secured in New-York State?

193. At what time was the National Currency Bank Bill passed by Congress? When was the First National Bank Currency issued? How are national bank bills secured? What amount of bonds is each national bank required to deposit? What are national bank bills a legal tender for? What is each bank designated as a depositary required to do? What effect have these regulations on the national currency? Are national bank bills a legal tender for private debts? Are they generally accepted in payment of private debts?

194. What does form No. 42 illustrate? What is the wording of a national bank bill?

195. What is the wording printed on the back of a national bank bill?

196. What are legal tender notes? How is the coinage of money and the regulation of its value controlled? What power is vested in Congress? What is legal tender money? What are legal tender bills commonly called? When were the first legal tender notes issued?

197. What is the wording of a legal tender note?

198. What is the wording on the back of a treasury note?

199. What is a letter of credit? For what purpose is it used? What convenience to a person is it? What risk does he avoid by a letter of credit?

200. What is the wording of the letter of credit illustrated in form No. 46?

201. How does an inland letter of credit differ from a foreign one? Are the general characteristics about the same?

202. What does form No. 47 represent? To whom is the credit to be given?

203. To whom is the letter illustrated in form No. 48 sent? For what purpose is the signature of the bearer of the preceding letter signed to this?

204. What do shipping merchants sometimes do? How is the money obtained to pay for the grain? By whom is the bill of lading made out? In whose name is it made? What is the bill of lading used for?

205. What is a bill of lading? For how much property was this bill of lading made? Where does the property go to under the bill of lading? How does this bill become security to the bank? How is it indorsed? If made out in the name of the shipper and indorsed and delivered to the bank what is the effect of it?

206. Who has the control of the wheat as soon as the bill of lading is delivered to the bank? What does the bank require the shipper to do in addition to assigning the bill of lading?

207. To whom must the consignee pay the proceeds from the sales of the wheat?

208. What is the effect of a payment of a debt in counterfeit money?

209. What is a contract of debt? What are the parties to such a contract called? What does the buyer become where goods are sold and not paid for? What does the seller become?

210. What is the duty of the debtor? What should he do when a note is due on a particular day? When are national bank notes a good tender?

211. What is the duty of the creditor when the debtor pays according to agreement? Where the debtor and creditor meet and balance up their accounts, by deducting from the debt some demand of the debtor, what effect does it have? If other property than money is taken by the creditor does it operate as payment to that extent? Has the debtor a right to tender a larger amount than the debt? When the debt is in the form of negotiable paper can the creditor safely wait for the debtor to pay?

212. What is a general depositor in a bank which becomes insolvent? What is the relation between a bank and a depositor? Where money remains in bank indefinitely without change what may be the result?

213. What does *oral* mean? When applied to evidence what does it mean?

214. What is the meaning of *parol* when used with reference to agreements? What is parol evidence?

215. What is a receipt? By whom is it executed and for what may it be used? What kind of evidence is a receipt? If a receipt is written in full of a specified debt how is it considered? Has a person a right to demand a receipt as a condition of paying a debt?

216. What is the legal meaning of a seal? What is a written instrument to which a seal is affixed called? What is the significance of a notarial seal?

217. What is the meaning of a specialty in law? If a written instrument is sealed what is it called? Is it ever called a specialty if it be not sealed?

218. What illustration is given of an impersonal payee? What must negotiable paper have to indicate a payee? Where a check is made payable to *cash* or order how is it held?

219. What illustration is given of a promise to accept a draft?

220. What is the illustration of checks which were post-dated? If one party failed to pay is that a reason why the other should not be a *bona fide* holder?

221. What defense was offered to a suit brought in Indiana on a note where the signature was obtained by fraud? How did the court hold?

222. Where a note was placed in an agent's hands for collection and wrongfully converted to the agent's own use, and was sold under an execution against him, did the purchaser get a good title?

223. If the principal maker of a note die is the holder bound to notify the surety that it is not paid?

224. Where a note was made payable for a certain sum named, with a blank per cent. in attorney's commissions, was it held negotiable or not?

225. What instance of immaterial alteration of note?

226. When is a person liable to a bank on accommodation paper?

227. What illustration is given to show that a note signed by a vestryman of a church is not a note of the church or corporation?

228. What illustration is given of the transfer of notes as a gift just before death?

229. What rate of interest does a note draw after it is due?

230. Is the fact that a note was bought for about one-half of its face value sufficient to put a purchaser on inquiry as to consideration?

231. What is the wording of the order drawn by J. B. Randall on John H. Erck? Why was this order held to be not absolute?

232. What is the peculiarity of the statutes of Indiana in regard to negotiable notes? Why was the note here mentioned held to be void?

233. What instance is mentioned of a note being given which was held to be void on account of illegal consideration?

234. What illustration is given of want of due diligence in giving notice of protest?

235. What particulars in relation to the circumstances are given of a man going to a bank to collect a certificate of deposit?

236. When a note is written "I promise to pay," and is signed by two persons, what kind of note is it?

237. What do the statutes of Ohio require when a note is given for a patent right? What effect does the transfer of such a note have in cutting off defenses?

238. Where a note is written, "I promise to pay to the order of myself," and is signed by two persons, under what circumstances may it be negotiated by the indorsement of *one* of the makers?

239. What are the circumstances relating to the bill of exchange here given? What did the court hold in regard to the matter?

240. What is payment? When payment is pleaded as a defense what must the defendant prove? Payment is doing what? How must payment be to extinguish the debt?

241. What is evidence of payment? What illustration is given?

242. What is of great importance in regard to business paper? What should be done? What has one no right to do?

243. What should be done with business letters which are written? What with those which are received?

SALES OF PERSONAL PROPERTY.

244. Is the sale of personal property governed by the same principles of law as other contracts? What is barter?

245. What is a sale? How is the word sale here used? Are contracts to sell the same as sales? May there be a transfer of title without a sale? What may the owner do when goods have been wrongfully converted by another? May he sue for the wrongful conversion as well as the value? What must be done to constitute a sale? What are the elements essential to a valid sale?

246. What kind of existence must the thing sold have? What if goods were destroyed when they were supposed to be sold? Must the goods be in the possession of the vendor? What if they were in the course of consignment? What may be sold which is not in existence? What illustration?

247. Can a mere possibility be sold? Can a person sell all the corn he may hereafter buy? May he contract to sell all the corn he may buy in market during a certain time? Would such a contract be a sale?

248. What is essential to a valid sale? Can a contract be enforced for the sale of property which is prohibited by statute?

249. What is price? Could there be a sale without price? What must the price be in to constitute a sale? What sum must it be? How can the price be fixed? What if anything happen to prevent the price being ascertained? Will inadequacy of price render the contract void?

250. What is necessary in regard to consent of the parties? What if there be any mistake about the identity of the goods or in regard to the price offered or demanded? When sales are negotiated by letter at what time must the acceptance be to

make the contract binding? When may the vendor withdraw his proposition?

251. Does the common law require any special form of words or writing or any solemnity to constitute a sale? What is all that is necessary? How has the common law been modified when the price is above a certain amount?

252. When was the British statute of frauds enacted? What does it require? Has this statute been re-enacted in the states? Is the statute as now used in the several States nearly identical in its provisions?

253. To what kind of contracts of sales does the statute of frauds apply? To what kind of executory contracts does it apply? What is the clause applicable to sales of personal property contained in the statute of New-York? To what contracts is it not applicable?

254. What application has this statute to the sale of property which exists in the same condition as it is to be delivered? Does it embrace executory contracts for the delivery of articles which have to be manufactured? What illustration is given of the sale of wheat? What in regard to indorsing a note?

255. What does the statute require in regard to contracts which are not to be performed within a year? How must a parol contract be to come within the statute? Where a contract cannot be performed within a year, what will not a partial performance do? What illustration is given?

256. What provision in the statute in regard to promises to answer for the debt of another? What may the writing be? What kind of promises does the statute apply to? What principle was early decided in English courts? What instances are given? Is the credit always given to the party who receives the goods? What right has the party who did not receive the goods?

257. How should goods be sent to the purchaser? When no directions are given how should they be sent? If ordinary care is taken in sending goods, who takes the responsibility? How long are goods at the risk of the seller? When does the seller's risk terminate?

258. What is continued possession of the vendor presumptive

evidence of? What is the presumption where goods are not delivered after a sale? If such goods are sold to another person and delivered does he get a good title?

259. What is the difference between an entire sale, and one which is severable? What illustration is given of a contract which is entire and one which is severable? How may a contract which was entire be made severable?

260. What are conditional sales? What if the party fail to pay at the specified time? Can a conditional buyer transfer the title by sale? When goods are sold on trial how long may they be kept? What if the buyer fail to return them? If a man sell with condition that he may buy the goods back within a specified time when does the option expire?

261. What facts must the vendor make known to the purchaser? What facts need he not make known? What would the moral law require of him? If misrepresentations induce the vendee to buy can he get any redress?

262. May a person have the possession of goods without being the owner? Can he make a valid sale without being the owner? Can stolen goods be sold so as to give a good title? When may a person get a good title to goods although they may have been stolen?

263. When there is no agreement as to the place of delivery of goods sold, where should they generally be delivered? Where a sale is to pay a debt where should the delivery be?

264. What is "good-will?" In what kinds of business is good-will often of great value? What should the party selling the "good-will" be required to do?

265. How must delivery of goods be, to be good? Is delivery to a carrier a good delivery to the vendee? Can a broker deliver for one party and accept for another?

266. How small a portion of the goods sold may be delivered to make it a complete delivery? How must the vendee accept? What peculiar kinds of delivery are there?

267. What does a valid sale do? What if the ownership be not transferred? Can the vendee demand the goods until he pay the price? If no credit be given how can the vendor demand the price? Where the offer to sell at a certain price is accepted, but the vendee refuses to pay, what may the vendor do?

268. What is required as to the property in order to complete the sale? If the contract specify a particular article in existence, may any similar article be delivered?

269. When does the ownership of goods sold pass in executory contracts? If the party who agreed to sell refuses to deliver what remedy has the buyer?

270. What care must the vendor take of the goods after they are sold? What will he be liable for?

271. What is a "bill of parcels" and what is it frequently called?

272. What is the arrangement of the bill here given? How are the items arranged?

273. What is a bill of sale? Is a bill of sale necessary when the property is delivered or part or all of the price is paid? Is it convenient as evidence of transfer of title? What must be done to protect the purchaser against creditors? If an actual and continued change of possession does not accompany the sale what will be the consequence?

274. What is the wording of form No. 52? Why is it sealed and witnessed?

275. What is the contract given in form No. 53? What purpose does the bill of sale serve? What is the object of the warranty? What is the wording of the contract?

276. What is a chattel mortgage? If the debt is not paid at the time agreed upon what may the mortgagee do? What right has the mortgagor? When is the mortgagee bound to sell?

277. What is the form and wording of the chattel mortgage given in form No. 54?

278. How does the form given in No. 55 differ from the preceding one? How does a mortgage differ from a bill of sale?

279. Why does a chattel mortgage need renewing? How long does it run? What is the language of the instrument of renewal given in form No. 56?

280. What is done if the debt is not paid at the time agreed upon? Is the property sold at private sale, or at auction? What is the wording of the notice of sale given in form No. 57?

WARRANTY.

281. What kind of warranty may be given when a sale is made? What is the maxim of the common law?

282. What does a general warranty cover? What does it not cover? How may the buyer relieve himself from all responsibility? Does anything which is known to the purchaser come within the warranty?

283. What may an express warranty be? To what extent will the vendor be bound by an express warranty? Will he be bound by any representations made after the sale? Upon what must the warranty operate to be binding? Do declarations of opinion constitute a warranty?

284. What is a special warranty? What warranty may be implied when a particular thing is ordered of a manufacturer for a special purpose? If the buyer select the thing will there be any warranty on the part of the vendor?

285. What implied warranty is there when a person sells property he has in possession? When would there be an implied warranty, if the goods sold were not in the vendor's possession? When the goods cannot well be examined what implied warranty will there be?

286. If there is a breach of warranty can the vendee return the goods? What is his only remedy? Where the vendor knows that a thing is ordered for a special purpose, and it is not fit for the purpose what may the buyer do?

287. Where goods are bought by sample what is the usual implied warranty? Does the warranty apply to the quality of the sample? What is all that the vendee can claim? Do all sales made by sample create an implied warranty? What is the rule? What must there be between the parties?

288. What case is reported in Massachusetts of a descriptive bill of sale? Did the bill of sale constitute a warranty? What illustration is given of a warranty of a horse? What was the case tried in Pennsylvania?

289. What implied warranty will there be when goods are to be manufactured and furnished for a particular purpose? What is a reason for this?

290. When the vendor knows that the buyer depends upon him, instead of using his own judgment in regard to latent defects will there be an implied warranty? What is such implied warranty grounded upon?

GUARANTY.

291. What is a guaranty?

292. How many essentials are there to a guaranty? What are they?

293. What notable difference in regard to the consideration in guaranty? Need the guarantor derive any benefit from the contract? When must the promise be made to be binding? What will be a sufficient consideration?

294. Must there be a principal debtor? Can the guaranty be larger than the principal debt? May it be smaller? How may a guaranty become a principal debt? By what is the guaranty usually measured? If the liability of the principal debtor is lessened what effect will it have on the surety?

295. What is necessary to make the contract binding? When does an offer to become guarantor become legally binding? When will there be an implied acceptance? When is no notice of acceptance required?

296. What is the wording of form No. 58?

297. What is the wording of form No. 59?

298. If the liability of the principal is varied without the consent of the guarantor, what would be the consequence? What if Mr. Wells should supply Mr. Monroe with fifty dollars, worth of groceries? What example of a collector of taxes? What of a cashier for a partnership?

299. What is the clause quoted from the statute of frauds in relation to guaranty? What instance of a guaranty in relation to a horse?

300. If the obligation is extended by law what effect will it have on the guarantor? What illustration of a joint stock company? What of a bond given for a City or County Treasurer? Can a guarantor renounce his liability?

301. Is a general guaranty negotiable with a note or draft when made on its face? How if a person write his name across

the back of a note before it is delivered, is the liability the same in all the States? How would such a person be considered in New-York?

302. What is the general rule in regard to the construction of a guaranty? Who only can hold the guarantor liable when it relates to a particular person? If it relate to a particular office what does it embrace? What illustration? What will the guarantor be bound for?

303. What are the following forms given to illustrate?

304. What is the wording of form No. 60? Is it a continuing guaranty?

305. Is the guaranty given in form No. 61 a limited or a continuing guaranty?

306. What is the wording of form No. 62? Is it a continuing guaranty?

307. What is the substance of form No. 63, is it continuing? What is it restricted to?

308. When does the liability of the guarantor commence? What if the debt be illegal? What else will release the guarantor?

309. What right has the creditor against the surety other than to proceed against him for the debt?

310. What implied agreement is there on the part of the creditor? What is he bound to show? For what reasons may the guarantor be discharged?

311. When will want of notice discharge the guarantor?

312. When will expiration of time discharge the guarantor? How can he be discharged when the time is not limited? In what other ways may he be discharged by expiration of time?

313. What kind of alteration of contract will discharge the surety? If the principal debtor is discharged, or the time extended, what effect will it have on the guarantor?

314. What will release of the principal do? May release of the principal sometimes be inferred? Does a release of the guarantor release the principal?

315. What will a merger of the debt in a higher security do? What illustration?

316. If the creditor give more time to the debtor without consent of the surety, what effect will it have upon the liability of the guarantor?

317. What will concealment of something material from the guarantor do? What illustration?

318. In what peculiar way may the liability of the guarantor sometimes be extinguished?

319. What may the guarantor sometimes demand of the creditor? May he make this demand if he did not know there were any securities at the time he became guarantor?

320. When only has the guarantor any claim against the principal debtor? What may he do as soon as the debt becomes due?

321. What may a co-surety do if he pay more than his share of the debt?

322. What does the guaranty in form No. 64 relate to?

323. When a guaranty is for the collectibility of paper, at what time would the guarantor become liable?

324. In the guaranty given in form No. 66 at what time could an action be brought against the guarantor?

LIEN.

325. What is lien? Upon what does it rest? If the holder of the lien allows the goods to go out of his hands what will be the result? What are the different kinds of lien? How long does the seller of goods have the right of lien? What does a sale of goods imply? If goods are sold on credit what may the buyer do? If before delivery the buyer becomes insolvent, what may the seller do?

326. Will a delivery of part of the goods destroy the right of lien? What is the rule? If a part of the price be paid, will it destroy the lien? Has the vendor any right of lien while the goods are in the hands of his factor?

327. How can an equitable lien be created? What illustration? Is it the owner of the property who has the right of lien? How may liens exist in equity?

328. May an agent have the right of lien on the property of his principal? What is the general lien? What may the claim be for? What may the lien result from? What does the usage

of trade give the factors? When a consignment is made to an agent, with particular instructions to apply the proceeds to a particular debt, can he hold the proceeds by right of lien of a balance of account?

329. What lien do mechanics generally have? What limitations to their right in some States? Under what kind of contract must the work be done in some States to give them the right? Why are these conditions required? What consequences might follow if the time were unlimited?

330. What is the common carrier's lien founded upon? What is it of the nature of? What may he do after a reasonable time?

331. Upon what ground are bailees entitled to lien? Does it apply to cases where money and services have been expended upon the property but no changes made in it? Has the keeper of a boarding stable a lien for the keeping of horses? What might give him a lien?

332. What lien has an inn-keeper? Has he a lien on baggage left by a person who is not a guest?

333. What will terminate a lien? To whom must the debt or claim be due in order that the lien may hold? If a party have the right of lien but claims to hold the goods for some other reason how will it affect the lien? In what other ways may a lien be terminated?

334. How long will a lien continue? Can a delivery be made to pass the title without losing the right of lien?

COMMON CARRIER.

335. What is a common carrier? What may the compensation be? Are passenger carriers considered common carriers? What are the elements of a common carrier?

336. Is the common carrier under obligation to carry for the public generally? What kind of goods may he refuse?

337. What does the common carrier charge for? Has he any right to charge one person more than another? How may his charges be regulated? What if he assume extraordinary risk?

338. What standing offer does he make to the public? Is he liable if he refuse to accept goods except for good reason?

What must the owner of the goods do if he intend to bring an action for damages? At what times need not the carrier receive goods?

339. How and for whom does a private carrier carry goods? When does he become a common carrier? Does a mere carriage for hire make one a common carrier? What is the liability of a private carrier?

340. When does the liability of the common carrier begin? What fixes his liability? What is indispensable to fix his liability? What responsibility does he assume as soon as the goods are fully accepted? For what kind of losses is he not liable? May a person be a common carrier and a private carrier at the same time? Is he liable for losses occasioned by his own servants?

341. What kind of acceptance is sufficient to fix the liability of the carrier? What illustration? What kind of acknowledgment is made when the goods are received?

342. Where goods are delivered to a common carrier to be transported by several separate companies, and the goods are lost, to which company may the owner look for indemnity? What is the law in New-York?

343. What is form No. 67 called? Who is the shipper? What was shipped? To whom?

344. What kind of care must the common carrier take of the goods he carries? How is he bound to follow instructions? What must he provide for the carriage of goods? What if he receive reasonable instructions and does not obey them and the goods are lost?

345. What has the strictness of his liability induced him to attempt? How have the courts held in regard to notices to avoid liability? What may the carrier do? What is the policy of the law in regard to neglect of carrier?

346. When does the carrier's liability terminate? If no time is specified for delivery when must it be made? Is the contract to deliver ever suspended? When will the law excuse the carrier?

347. Where is the proper place to deliver? How if a particular place is agreed upon? What may the carrier do if the consignee refuse to accept the goods?

348. To whom should delivery be made? Suppose the goods are delivered to the wrong person by mistake? How may delivery be made?

349. When does the liability of the carrier cease? What is the liability of the warehouseman?

350. To whom does the carrier generally look for the payment of freight? If the consignee refuses to pay, what means has the carrier of enforcing payment?

351. What right is given the common carrier for the carriage of goods? How may he lose the right of lien? What may the carrier do if the freight is not paid within a reasonable time?

SHIPPING.

352. What is the meaning of shipping as here used? Does the transportation of goods by water come within the scope of the common carrier? Who are the parties concerned in the transportation of goods by water?

353. What do the owners of vessels frequently do? When a ship is hired what is it called? What is the contract for the letting of the ship called? Who is the charterer?

354. What may the owner of the goods do? When a ship is chartered for the season who generally employs the officers and crew? How is much of the shipping carried on?

355. What is the contract contained in the charter party defined to be? By whom is the charter party usually made? How are the terms of the charter party enforced? What clause is generally inserted? What does the charter party usually describe?

356. What is a ship called when it is not chartered but carries goods for the public? Is such a ship a common carrier?

357. What is a bill of lading? How many bills of lading are usually made? For whom are they made? What do the three constitute? Is a bill of lading negotiable? For what purpose is it sometimes used? What is the shipper called? What is the person called to whom the goods are shipped?

358. What are the duties of the ship owner? What must he supply the ship with? What must he see to? What must he have on board? How must he deliver the goods?

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359. What are the duties of the merchant? What is primage? When should the freight be paid? What does the amount of freight depend upon?

360. What is a maritime loan? What is given as security for such loan? When the bond is on the ship what is it called? When on the cargo, what? What is the foundation of such a loan? What does the payment of the loan depend upon? Who takes the risk?

361. What is meant by general average? What is the simplest case of general average? What must be the cause of throwing goods overboard in order to come under general average? What cases will not come under general average? What is the property called which is lost? What right does a general average give the owner of the lost goods?

362. What are the contributory interests? What is exempt from assessment? What proportion does the ship pay? What is the customary way of making a settlement?

363. What is salvage? Why is a large compensation allowed? When is a person entitled to salvage? What amount is usually allowed? How is the amount regulated?

364. What is the substance and wording of the contract given in form No. 68?

STOPPAGE IN TRANSITU.

365. What is the right of stoppage in transitu based upon? What does it depend upon? What is its extension of?

366. How many necessary conditions are there to establish the right? What is the first condition? What the second? The third? Can the person who has guaranteed the payment stop the goods?

367. Who only can generally stop the goods? Can a person other than the ultimate vendor stop the goods? May a person who sends goods to be sold on joint account?

368. What kind of insolvency is sufficient to give the right? Is the fact of his acceptances being dishonored sufficient? Is the contract entirely broken when the stoppage is effected? What may the vendee do? What may the vendor sometimes do?

Who takes the responsibility when goods are stopped? What can the vendee do if the goods are wrongfully stopped?

369. Where must the goods be when stopped? If they have been delivered can there be any such right? What kind of delivery is sufficient to destroy the right? May the vendee meet the goods and take possession and thereby destroy the right?

370. When is the transit ended so as to destroy the right? Must the vendee have actual possession? When will constructive possession be sufficient? When is the transit always ended? Can the right be exercised while the goods are in a general warehouse?

371. Must the vendor make the stoppage himself? Who may do it for him? Can a stoppage be made by giving notice to the carrier?

372. Is the sale rescinded by the stoppage? How does the vendor hold the goods? What may the vendee do? What may the vendor do?

AGENCY.

373. What is an agency? What is rendered necessary by the magnitude of business? What is the general rule as to the right of a person to appoint an agent? What is the contract between the principal and agent in the nature of? When legally authorized, what is the act of the agent?

374. How is an agency created? How must an agency to convey land be established? For ordinary contracts how may the appointment be?

375. Whom may the principal appoint? Can a person act as agent who cannot do business for himself? What is the reason of this? Can a principal delegate authority to an agent to do an unlawful act? Can he appoint an agent to do a thing which was confided to him as a personal trust?

376. How may the agent receive his authority? What if a principal allow another person to do acts in his name when he is cognizant of the fact? What is a verbal appointment sufficient for?

377. Can one of several principals, who are tenants in common, appoint an agent to do business for all? Can a partner appoint an agent for the partnership?

378. Where several persons are appointed by law to do something, must they all act together? When goods are shipped to two factors for sale, may one sell without the consent of the other? Where a partnership is appointed as agents may one partner act?

379. What is the extent of the agent's authority to bind the principal to be gathered from? If an agent exceed the power given him will the principal be bound? How may authority be sometimes implied? What if an act be done without authority and the principal take the benefit of it?

380. How many kind of agency are there? What are they?

381. What is a special agency? Does limiting the authority to a particular business make it a special agency? What should a person do who deals with a special agent?

382. What is a general agency? What is the principal bound by in a general agency? If an agent is instructed not to warrant goods, but does warrant them, is the principal bound? When would he be bound?

383. What is a limited agency? What does it apply to?

384. What is an unlimited agency and to what does it apply?

385. What is the commercial division of agency? Who is a factor? What is he often called? What is a super-cargo? Does a factor have the goods in his possession? Does he have any interest in the goods? What is a factor entitled to?

386. Who is a broker? What compensation does he get? How does he act? Has he the property in possession? May an agent be both a factor and a broker at the same time?

387. How are written instruments generally construed? Where a person is appointed to sell land can he lease it? Where an agent is appointed to get a bill discounted, what may he do? When the appointment of an agency is susceptible of a different meaning from that intended, and the agent is thus misled, is the principal bound?

388. In their dealings with agents, what are strangers to be governed by? Is the fact of a person being a special agent sufficient to put one on his guard? What is the authority delegated an agent by the principal influenced by?

389. When the agent receives specific instructions from his principal what must he do? What is the rule as to loss resulting from non-compliance with orders? Will a slight deviation make the agent liable? If an agent is instructed to buy goods at a limited price, when will he be justified in paying more? When has a consignee a right to sell goods on credit? If he is appointed to sell, can he barter or pledge the goods?

390. What is the duty of an agent as to keeping accounts? What may result from not keeping correct accounts? To whom belongs the profit made by an agent? Has an agent any right to appropriate the interest which accumulates on his principal's capital?

391. How must the agent keep his principal's property? What may be the consequence if he mix it with his own? How should he deposit his principal's money? What if he deposit in his own name and the bank fail?

392. When can a person safely pay money to an agent? When money is paid to an agent on a written instrument, what should be required of the agent? If goods are bought of a factor is the purchaser safe in paying him the price? What is the general rule in regard to the right of a broker to receive money?

393. What is meant by a *del credere* commission? Is it similar to a guaranty?

394. When losses occur in consequence of violation of duty, or negligence, who is responsible? When an agent is instructed to obtain insurance and neglects to do so, and the property is lost, who sustains the loss? When a person is appointed to buy a certain amount of stocks, and only buys a part of it, will the principal be bound for the quantity purchased?

395. What amount of skill is required of an agent? What is ordinary diligence? What is an agent bound to obey? When is an agent under obligation to secure insurance? What is his liability if he neglect to do so? Who has power to control a consignment? When may the consignee control it?

396. What is an agent sometimes liable for? What is his liability if he receive money and misapply it? How otherwise is he liable? If an agent is directed to do an act which would not result in any benefit to the principal and he neglect it, is he liable?

397. Can a person act as agent for both parties in a transaction? Can he buy goods for one party when he was acting as agent to sell them for another?

398. What position does a factor occupy? What is he liable to his principal for?

399. When must he account for the price of goods which he has sold? What exceptions to the rule are given?

400. When does an agent avoid personal liability? When does he make himself liable? When is he always liable? What is an agent liable to his principal only for? What is he liable to third persons for? When can an agent refuse to deliver goods to the rightful owner?

401. What is an agent entitled to? How may the amount of his commission be determined? What right is given him to secure him his commission? What is he entitled to beside commission?

402. What is the principal bound by? What may the principal do?

403. What is the principal liable to third persons for? When only can the principal be held liable for the torts of the agent?

404. If a third person suffer from a wrong perpetrated by the agent, which was ordered by the principal, who will be liable? Is the agent bound to do an unlawful act because he is directed to?

405. Can an agent generally appoint sub-agents? When may he do so?

406. When is the principal liable for representations made by the agent?

407. When is a notice to an agent equivalent to a notice to the principal? At what time must such notice be? What would be considered notice to a bank? If knowledge is acquired by an agent, when would it be considered as notice to the principal? What is the rule as to sufficiency of notice?

408. How may the principal's liability be affected by purchases made by his agent? What if an agent represent himself as principal when buying?

409. What is the effect of delivering goods to the general agent of the purchaser? Is the right of stoppage destroyed if the goods are delivered to a common carrier?

410. When can money paid by an agent be recovered back by the principal?

411. In what different ways may an agency be dissolved?

412. When may the principal revoke his authority? When can it not be revoked unless there was an express agreement that it might be? When can it not be revoked without making the principal liable?

413. How may the principal revoke his authority? May it ever be implied from the acts of the agent? When may it be so implied? As to the agent, when does the revocation take place?

414. When can an agent renounce the authority of the principal? What will he be liable for?

415. How may an agency be terminated by operation of law? Where the authority is terminated by the death of the principal, when do the acts of the agent become void? What exception to this rule?

416. What should be clearly stated when a written contract is made by an agent for his principal? How should such contract be signed? Where an agent is directed to get a note discounted, what has he implied authority to do? How may a person bind himself by a written instrument?

417. What is the contract given in form No. 69? What is the object of a power of attorney? Who is the principal in this power of attorney? Who is the agent?

418. What is the agreement given in form No. 70? Who are the principal parties to it? What are the principal points in the agreement?

PARTNERSHIP.

419. What is a partnership defined to be? Is it essential that all the partners invest capital? What is it important to inquire into?

420. Is community of profit essential? Where each contributes a certain amount to make a joint purchase, and the goods are to be divided, are the parties partners? In order to make a partnership, what must there be? Can there be a partnership if one is to have all the profit? Is it essential that the partners share equally? How may the profit be divided? Must the losses be shared equally?

421. May a person be liable as a partner when he is not a partner? What are the three illustrations? To whom will the parties be liable in these instances?

422. How must the parties share profits in order to be partners? What sharing is sufficient? How may the amount of profits vary? What is the reason of this? Is one a partner who receives a share of the profits as a compensation for his services?

423. What is necessary as to assent? What is it governed by, and how should it be established?

424. Does the common law require any particular forms to constitute a partnership? What sort of contract is a partnership? How may it be formed?

425. How ought partnership contracts to be made? For what reasons? What should be put into the written articles? What is the presumption when the articles of agreement are in writing? What will the partners be governed by, whether the agreement be in writing or be verbal? How may a person, not a partner, render himself liable as such?

426. What is an express contract? What is the important difference between a written and a parol contract? Are they equally binding?

427. When will the law establish a partnership by implication? What illustration?

428. What is the principal object to be secured by the formation of a partnership? For what purposes may it be? May it be limited to a single adventure?

429. How are joint stock companies organized? What are the objects to be secured by these companies? What are they based upon?

430. What are the provisions of the statute of New-York, in regard to the organization of joint stock companies? What must the certificate set forth?

431. Where must the certificate be filed? What does the Secretary of State do as soon as the certificate is filed? What does this certificate empower the parties to do? Give illustrations of joint stock companies? Who has the management of these companies? When does the liability of each member begin?

432. What are limited partnerships? How are they regulated? May all the partners generally be limited? What is required by the statute? Does the name of a limited partner appear in the partnership? What must be recorded and what published?

433. How many kinds of partners are there? What are they? Who is an ostensible partner? Who a nominal partner? What is meant by a dormant partner? What other qualification to a partner.

434. Who may be partners? May a person under age be a partner? Can a person under age be held on partnership contracts? What must such person do as soon as he becomes of age.

435. Can aliens do business and become partners?

436. What legal rights have married women in regard to carrying on business?

437. How long may partnerships continue? If no time is fixed what may be done? What is the partnership when a specified time is fixed? What does the death of a partner generally do?

438. What is a partnership when created like? What is the partnership? What does it possess? What is it subject to? What does the partnership usually specify? What may it be confined to? What should the agreement always specify? If no agreement is made in regard to division of profits what will the law presume?

439. What are the sets of relations involved in a partnership? What kind of interest does each partner have in the partnership? What power of conveyance has each partner? What amount of indebtedness may each partner create? Can one partner bring an action at law against another for any service performed or omitted in partnership matters? What does each partner impliedly promise? If one partner take all the responsibility and do all the work can he recover from the others for extra services?

440. What are third persons dealing with the partnership presumed to know? Can a third person receive partnership property to apply on a debt of one of the partners? Has a partner a right to compound a debt with a third person? Can he give a debtor time without consulting the other partners?

441. What are the things enumerated which a partner may do?

442. In what respect is a partner limited in binding the firm? Can a partner release a contract of debt which was given under seal?

443. How must the contract generally be made to bind the firm? When will the firm be bound if made in the name of one of the partners? What instance is given? How if the contract is made for the benefit and in the name of one of the partners?

444. What is necessary to bind the partnership beside the contract being in the partnership name? What instance is given where the partnership would not be liable? If a thing is bought which might after a time be used by the partnership will it be bound by the contract of one partner?

445. How must third persons deal with the partnership in order to bind it? When would not the firm be bound? Is the partnership bound if the partner intend to defraud his copartners?

446. When the partnership is bound is each partner also individually bound? May their individual property be taken for a partnership debt? What may this liability bring about? What property must individual and partnership creditors each take first?

447. What is every partner liable for? Is a dormant partner ever liable? What must a retiring partner do to escape further liability? What is a real partner liable for until notice is given? What principle does this liability result from? If when a partner retires he leave his name on the sign what will he be liable for? What kind of notice should be given? Is it necessary to give notice when a partnership is dissolved by the death of one of the partners?

448. In what different ways may a partnership be dissolved?

449. May any partnership be dissolved by mutual consent of all the partners? How will such a dissolution be held?

450. What is the effect of specifying that a partnership shall terminate at a certain time? What if the partners should still continue to do business as before?

451. What effect will insolvency of one of the partners have on the partnership? For what reason?

452. May a partner renounce his connection with a partnership?

453. In what different ways may a partnership be dissolved by completion of the business?

454. When will marriage work a dissolution of a partnership? For what reason will it?

455. Will the death of one of the partners generally produce a dissolution? What reason is given?

456. When will the insanity of one of the partners produce a dissolution?

457. On what grounds will a court sometimes decree a dissolution? Will it interfere for any trivial reason?

458. What are the consequences of a dissolution? If the partners are not able to agree upon a division of the effects what must be done?

459. What is the substance of the articles of copartnership given in form No. 71?

AGREEMENTS FOR PERSONAL SERVICES.

460. What is every employee or servant? What law will generally be applicable? What are all agreements to work for a specified compensation? When must the contract be complied with? When the hiring is general, and no time agreed upon, how is it considered?

461. How is the time usually regulated with domestic servants? When has either party a right to terminate the contract?

462. When is there an implied promise to pay for services? If there is no agreement as to amount to be paid what is the rule? When are the wages generally due? How much must the employer pay where there is no agreement as to amount?

463. What skill is required of the employee? If his services are professional what is the rule? If a mechanic undertake to make a thing for a particular purpose what may be required of him? What kind of skill is required of a domestic servant?

464. Where labor and services are employed, what care must the employee take of the property?

465. Where the engagement is for a year what is the employer to do? If he discharges the employee before the termination of the year will his liability cease at the time of the discharge? How might his liability sometimes be reduced?

466. What is the employee bound to do? Suppose he leave off before the expiration of the time? If he hire for a month and leave off at the end of three weeks can he collect any wages? When one works by the job what must he do before he can collect any wages? What if his employer discharge him while he is doing his work properly? If a servant disobey a just and reasonable command what may the employer do?

467. What right does a mechanic have to secure payment for his services? What illustration?

468. When has either party a right to terminate the contract without giving notice? What will the employee be entitled to if the contract is dissolved by the mutual consent of both parties before the time expired? If the employer have good reasons for discharging the employee must he state the reason?

469. What is the contract embraced in form No. 72?

COPYRIGHT.

470. What is a copyright? For what length of time is this right granted?

471. What must be sent to the librarian of Congress? When must this be done? What may the printed title required be? Upon what kind of paper must the printed title be?

472. What fees are required to secure a copyright?

473. What must be sent to the librarian of Congress, and within what time?

474. What notice, and how must it be given to make the copyright valid? What penalty is imposed for giving a fraudulent notice?

475. What may an author reserve the right to do?

476. How long does a copyright hold good?

477. How may a renewal be secured, and for what length of time?

478. How soon must a work be issued after it is copyrighted?

479. Is a copyright assignable in law? What must be done when an assignment is made?

480. How may a person secure a duplicate certificate of copyright?

481. What must be done when a book is published in more than one volume?

482. What kind of description must be given to secure a copyright on a work of art or a picture?

483. Can copyrights be secured on trade-marks or labels?

484. What must each applicant for a copyright state distinctly? Is an affidavit required?

BAILMENTS.

485. What is a bailment? Who are the parties to a bailment?

486. What may the subject-matter consist of? Is any consideration necessary? What has the bailor a right to insist upon? What illustration is given of a bailment? How does a bailment differ from barter?

487. What are the different kinds of bailment enumerated? What are these bailments influenced by? For whom may the benefit be?

488. Where the bailor receives all the benefit, what kind of diligence is required of the bailee? What is required where all the benefit is for bailee? What is required where the benefit is for both parties? What is ordinary neglect? What is gross neglect? What is slight neglect?

489. What is a deposit? What kind of undertaking is it with the bailee? What are the parties to the deposit called? What does the depositary undertake, and what care must he exercise over the property? What kind of property may be deposited? Must the depositor be the owner of the thing deposited? To whom is the benefit?

490. What is the object of the deposit? Does the depositary receive any compensation? Is a person obliged to become a

depository? May one become a depository without express assent? How?

491. Has the depository any right to use the deposit? When may he?

492. What must the depository do when called upon for the deposit? How does a deposit of goods differ from a deposit of money? What does the law call a deposit of money? What may the depository do if the deposit is of a perishable nature?

493. In what instances is the depository excused from returning the deposit?

494. Is the depository under obligation to deliver the deposit to the owner if he is not the depositor? Would he still be liable to the depositor?

495. If the depository refuse to deliver the goods to the depositor without good reason what is his liability?

496. What is a mandate? Is there any compensation? How does a mandate differ from a deposit? What is it in respect to? How is it made? What is the person employing called? What is the person employed called?

497. What are the three necessary elements in the composition of mandate? When must the thing be done? What must it have respect to? Of what character must it be? Does the mandatary have any property interest in the thing? What rights has he?

498. What is the mandatary responsible for? How may his responsibility vary? What is a nonfeasance? Why is a person not liable if the undertaking was not begun? What is a misfeasance? Why is a person liable for losses occasioned by a misfeasance? What amount of skill must a mandatary bring to his undertaking?

499. In what different ways may a mandate be terminated?

500. What is a loan for use? What are the parties called? To whom is the benefit? What is the borrower not liable for?

501. Has the borrower any special property in the thing borrowed? In what respect is its use limited? Does the lender receive any compensation? Who receives the benefit of this bailment? How must the borrower use the thing borrowed? If he use it improperly what will be the consequence?

502. What amount of care must the borrower take? What if the lender know that the borrower is a careless person? Is the borrower liable for inevitable accidents?

503. What is the duty of the lender? What in regard to defects? Who must pay the ordinary expenses of the thing borrowed? What must the lender pay?

504. What is a pledge? How does it differ from a mortgage? What are the parties called? What does the right of the pledgee depend upon? What must the pledge be for? What is essential to a pledge? What only can be pledged?

505. Does the pledgee have a special property in the pledge? What if he voluntarily give up the pledge? If it be wrongfully taken from him can he recover it? What may he hold the pledge for except the principal debt? For whose benefit is this bailment?

506. What are the rights of the pledgee? May he keep the pledge in payment of the debt? When only can he sell it? May the pledgee use the pledge?

507. What is the principal right of the pledgor? How long has he this right?

508. How may this bailment be terminated?

509. What is the bailment of hiring? What are the parties called? What does the hirer do? What illustration?

510. What are the duties of the letter to hire? What must he not interfere with? What can he do if the hirer misuses the thing hired? What action may he bring? Who is to pay ordinary expenses?

511. What are the duties of the hirer? What does the hirer buy? What care must he take of the property? For what is he liable? When is he liable for the acts of his servants? How must he use the bailment? In what condition must he return it?

FIRE INSURANCE.

512. What is the contract of fire insurance one of? How is the business of insurance mostly carried on? What is the contract of insurance called? Who is the *insurer*? How is the word *underwriter* used? What is the owner of the property called?

513. What is the object in securing insurance? How does the business man find relief from the fear of loss by fire? What have insurers done?

514. What is the first step towards securing insurance? What should the application contain? What are some of the most important facts for the insurers to know? How must questions be answered by the applicant? If the application is satisfactory what will the insurers do?

515. What agreement does the policy contain? What is the consideration which is paid by the insured called? Is the premium to be paid at all events? How and when may it be paid? What must be mentioned in the policy? How is the policy usually made?

516. What is the usual time for which insurance is made? What must be stated with precision? When the time of insurance expires how is it usually renewed? What does the ticket of renewal contain? Is it as binding as a new policy?

517. What is the premium and how is it usually paid? What if there are any conditions in regard to the payment of the premium?

518. What is an insurable interest? What is meant by the extent of one's interest? What is a safeguard to the insurer? Who may secure insurance?

519. What are insurance policies full of? What are some of the quotations?

520. How many kinds of policies are there? What is a valued policy? What is an open policy? What does the policy generally provide for?

521. How is the amount of insurance regulated? Why cannot a person secure insurance for any amount? What do prudent companies limit themselves to? What is the extreme amount insured? What may be done to procure sufficient indemnity on valuable property? Where insurance is obtained in several companies and a loss occurs how is it paid?

522. How is insurance usually carried on? How does a person become a stockholder? What is the capital secured by?

523. How is a settlement of losses made? What is the quotation given?

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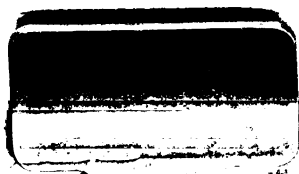
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